

IN THE COURT OF APPEALS OF IOWA

No. 3-573 / 12-0681

Filed July 10, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DEMETRIUS BAILEY,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Odel G. McGhee II,
District Associate Judge.

Demetrius Bailey appeals from his conviction for domestic abuse causing
injury. **AFFIRMED.**

Jeffrey A. Wright of Carr & Wright, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney
General, John Sarcone, County Attorney, and Shannon K. Archer, Assistant
County Attorney, for appellee.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

DANILSON, J.

Demetrius Bailey appeals his conviction for domestic abuse causing injury in violation of Iowa Code section 708.2A(2)(b) (2011). On appeal, he maintains that he received ineffective assistance of counsel at trial. In support of his contention, he claims counsel failed to depose the victim who had recanted her earlier statements and wrongly advised him “it did not matter if he pled guilty because he was already going to prison.” He asserts that but for counsel’s breach of duty, he would not have pled guilty and instead would have elected to stand trial.

We generally preserve ineffective-assistance-of-counsel claims for postconviction relief proceedings. *State v. Utter*, 803 N.W.2d 647, 651 (Iowa 2011).¹ “Only in rare cases will the trial record alone be sufficient to resolve the claim on direct appeal.” *State v. Tate*, 710 N.W.2d 237, 240 (Iowa 2006). We prefer to reserve such claims for development of the record and to allow trial counsel to defend against the charge. *Id.* If the record is inadequate to address the claim on direct appeal, we must preserve the claim for a postconviction-relief proceeding, regardless of the potential viability of the claim. *State v. Johnson*, 784 N.W.2d 192, 198 (Iowa 2010).

Here the record on this appeal is inadequate to address Bailey’s claims as we do not know what advice his trial counsel gave him or the reasons counsel may have had for not deposing the victim. The issue of whether trial counsel

¹ See also Iowa Code § 814.7(3), which provides, “If an ineffective assistance of counsel claim is raised on direct appeal from the criminal proceedings, the court may decide the record is adequate to decide the claim or may choose to preserve the claim for determination under chapter 822.”

was ineffective is reserved for possible future postconviction-relief proceedings. See *id.* (holding if a claim of ineffective assistance of counsel cannot be addressed on appeal because of an inadequate record, the court must preserve it for postconviction-relief proceedings even if it is raised in a general or conclusory manner). Because this was the only issue on appeal, Bailey's conviction is otherwise affirmed without opinion. See Iowa R. App. P. 6.1203(a),(d).

AFFIRMED.