

IN THE COURT OF APPEALS OF IOWA

No. 3-756 / 12-1879
Filed September 5, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ART EUGENE THOMAS,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark D. Cleve (plea) and Bobbi M. Alpers (sentencing), Judges.

Defendant appeals his conviction for possession with intent to deliver (crack cocaine). **AFFIRMED.**

Jack E. Dusthimer, Davenport, for appellant

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, Michael J. Walton, County Attorney, and Joseph A. Grubisich and Kimberly K. Shepherd, Assistant County Attorneys, for appellee.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

DANILSON, J.

Art Eugene Thomas appeals his conviction for possession with intent to deliver (crack cocaine). On appeal, he maintains he received ineffective assistance of counsel at trial. Thomas claims counsel wrongly assured him he would serve his sentence in a residential correctional facility if he accepted the State's plea bargain, or that the plea agreement included an undisclosed term, rendering his plea unknowing and involuntary. He asserts that but for counsel's breach of duty he would not have pled guilty and instead would have elected to stand trial. Because the record is not sufficient to resolve the claims on direct appeal, we affirm.

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 proceeding, regardless of the potential viability of the claim. *State v. Johnson*, 784 N.W.2d 192, 198 (Iowa 2010).

The record on this appeal is inadequate to address Thomas' claim as we do not know what assurances his trial counsel gave him, if any. Further, if

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."

assurances were given, we do not know the reasons counsel may have had for doing so. The issue of whether counsel was ineffective is reserved for possible postconviction proceedings. See *State v. Atley*, 564 N.W.2d 817, 833 (Iowa 1997) (“[C]laims of ineffective assistance of counsel raised on direct appeal are ordinarily reserved for postconviction proceedings to allow full development of the facts surrounding counsel’s conduct.”).

Thomas also contends that if the plea agreement encompassed a term not disclosed to the court, defense counsel was ineffective for failure to object to the prosecutor’s misrepresentation of the terms of the plea agreement. Our record is also insufficient to ascertain any undisclosed plea agreement terms.

Because we reserve Thomas’ claims for full development of the facts in postconviction proceedings, his conviction is affirmed without further opinion.

AFFIRMED.