

IN THE COURT OF APPEALS OF IOWA

No. 6-1056 / 06-0050
Filed January 31, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANTHONY DARNELL ROBINSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,
Judge.

Anthony Robinson appeals from his convictions of first-degree robbery
and willful injury resulting in bodily injury. **AFFIRMED.**

Patricia Reynolds, Acting State Appellate Defender, and Dennis D.
Hendrickson, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant
Attorney General, William E. Davis, County Attorney, and Robert Cusack,
Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

Anthony Robinson appeals from his convictions of first-degree robbery and willful injury resulting in bodily injury. He contends the trial court erred in denying his motion in arrest of judgment because “the whole record denies serious injury” and “the whole record . . . denies the involvement of a dangerous weapon.” In the alternative, he contends his trial counsel was ineffective in failing in his motion in arrest of judgment to challenge the evidence of serious injury or use of a dangerous weapon necessary to sustain his robbery conviction. We review claims of ineffective assistance of counsel de novo. *State v. McBride*, 625 N.W.2d 372, 373 (Iowa Ct. App. 2001).

Appellant posits two claims on appeal:

- I. Did the Trial Court Err in Denying a Motion in Arrest of Judgment as to Count I of the Trial Information, Robbery in the First Degree? (and)
- II. Counsel may have been ineffective for failing to preserve the issue raised in Division I.

Defendant's motion in arrest of judgment only claimed the evidence did not support the theft element of robbery. It made no claim concerning serious injury or lack of a dangerous weapon. Error was not preserved on the issue now argued on appeal.¹ *State v. Moorhead*, 308 N.W.2d 60, 64 (Iowa 1981) (“Matters not raised before the trial court cannot be raised for the first time on appeal.”)

Because error was not preserved on issue one, we turn to the ineffective assistance of counsel claim. To establish an ineffective assistance of counsel claim a defendant must show (1) counsel failed to perform an essential duty, and (2) prejudice resulted therefrom. *Wemark v. State*, 602 N.W.2d 810, 814 (Iowa

¹ A motion in arrest of judgment is not the correct method to challenge the sufficiency of the evidence. *State v. Dallen*, 452 N.W.2d 398, 399 (Iowa 1990).

1999). Ordinarily, we preserve ineffectiveness claims raised on direct appeal for postconviction relief to allow full development of the facts surrounding counsel's conduct. *Berryhill v. State*, 603 N.W.2d 243, 245 (Iowa 1999). However, the record here is clear that counsel did not fail to perform an essential duty and we can accordingly affirm on direct appeal.

Following a jury trial, Robinson was found guilty of first-degree robbery and willful injury resulting in serious injury. The district court then granted Robinson's motion in arrest of judgment concerning the willful injury conviction; the court concluded the evidence was insufficient to find the victim suffered a serious injury and, accordingly, entered judgment against Robinson for willful injury resulting in bodily injury. Robinson argues his trial counsel was ineffective in failing to argue in the motion in arrest of judgment that the element of his robbery conviction requiring proof that he purposely inflicted or attempted to inflict serious injury on the victim was not met.

Disregarding the issue of whether a challenge to the sufficiency of the evidence can be properly raised in a motion in arrest of judgment, we conclude counsel was not ineffective in failing to challenge the evidence supporting his robbery conviction because the argument is meritless. *See State v. Greene*, 592 N.W.2d 24, 29 (Iowa 1999) ("Counsel is not incompetent in failing to pursue a meritless issue."). The jury was instructed that it could find Robinson guilty of first-degree robbery if it was proven that he purposely inflicted or attempted to inflict a serious injury on the victim, or was armed with a dangerous weapon. The evidence shows Robinson punched the victim, stepped on him, rammed him into a vehicle, and stabbed him in the abdomen. A witness called the police

because she thought the victim was “about to die.” Although the district court concluded the injuries sustained by the victim were not serious, there is ample evidence that Robinson attempted to inflict a serious injury on the victim.

AFFIRMED.