

IN THE COURT OF APPEALS OF IOWA

No. 6-340 / 05-0654
Filed June 28, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

AKQUAR AKQUAR,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Joel D. Novak (waiver of jury trial and trial) and Artis Reis (sentencing), Judges.

Akquar Akquar appeals convictions for burglary in the first degree, sexual abuse in the third degree, and indecent exposure. **AFFIRMED.**

Cathleen J. Siebrecht of Siebrecht & Siebrecht Law firm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, John P. Sarcone, County Attorney, and Frank Severino, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Huitink and Miller, JJ.

MILLER, J.

Akquar Akquar appeals convictions for burglary in the first degree, in violation of Iowa Code sections 713.1 and 713.3 (2003), sexual abuse in the third degree, in violation of sections 709.1 and 709.4(1), and indecent exposure, in violation of section 709.9. He contends his trial counsel was ineffective. We affirm his convictions and preserve his ineffective assistance of counsel claims for a possible postconviction proceeding.

Akquar is from the Sudan and his native language is Arabic. The record does not show whether he is able to read or write the English language.

The State charged Akquar, by trial information, with the above counts as well as burglary in the second degree, assault with the intent to commit sexual abuse, and a second count of sexual abuse in the third degree. The parties filed a stipulation of facts and Akquar filed a written waiver of jury trial. Akquar signed both documents. The stipulation of facts stated the following:

On or about September 3, 2004, in Polk County, Iowa, the defendant broke and/or entered into the residence of L.R. located at 1241 33rd #E, Des Moines, Iowa. The residence was an occupied structure. A person or persons were present in the occupied structure. The defendant did not have permission or authority to break into and/or enter the residence. The defendant broke and/or entered with the specific intent to commit an assault or theft. Once the defendant entered the residence he intentionally inflicted a bodily injury on L.R.

On or about September 3, 2004, in Polk County, Iowa, the defendant entered the residence of L.R. located at 1241 33rd #E, Des Moines, Iowa. The defendant did not know L.R. The defendant performed a sex act with L.R. in the living room by placing his fingers and/or hand on the genitals of L.R. The touching was done with a sexual intent and sexual purpose. The sex act was performed by force or against the will of L.R.

On or about September 3, 2004, in Polk County, Iowa the defendant exposed his genitals or pubes to K.M. and committed a

sex act in her presence and view. The defendant did not know K.M. and was not her spouse. The defendant committed the act(s) with the specific intent to arouse or satisfy his sexual desires. The defendant[']s acts were offensive to K.M. The defendant knew the act(s) were offensive to K.M.

The case proceeded to non-jury trial. An interpreter was present at trial, however it appears from the record the proceeding was at many points not interpreted verbatim. At the time of trial Akquar withdrew a previously filed notice of defense of intoxication. The court found Akquar guilty of burglary in the first degree, one count of sexual abuse in the third degree, and indecent exposure. It ordered a presentence investigation report and set a date for sentencing. However, prior to the date set for sentencing Akquar appeared before the court and through counsel informed the court that he wanted to be sentenced immediately and waive the use of a presentence investigation report. The court accepted the waivers and sentenced Akquar to terms of imprisonment not to exceed twenty-five years on the burglary conviction, not to exceed ten years on the sexual abuse conviction, and not to exceed one year on the indecent exposure conviction. It ordered the burglary and sexual abuse terms to run consecutively to each other and the indecent exposure term to run concurrently with the other two. The remaining counts of the trial information were dismissed.

On appeal Akquar contends his trial counsel was ineffective for failing to: (1) obtain an interpreter for assistance during the preparation of his defense; (2) have an interpreter translate the stipulation of facts before he signed it; (3) have him evaluated to determine whether due to his brain injury he had a diminished capacity defense, could understand the proceedings, or could knowingly and

voluntarily enter a stipulation of facts; and (4) further investigate whether to proceed with an intoxication defense.

We review claims of ineffective assistance of counsel de novo. *State v. Martin*, 704 N.W.2d 665, 668 (Iowa 2005). To prove trial counsel was ineffective the defendant must show that counsel breached an essential duty and that prejudice resulted from counsel's error. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); *State v. Griffin*, 691 N.W.2d 734, 736-37 (Iowa 2005).

Generally, we do not resolve claims of ineffective assistance of counsel on direct appeal. *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002); *State v. Kinkead*, 570 N.W.2d 97, 103 (Iowa 1997). We prefer to leave ineffective-assistance-of-counsel claims for postconviction relief proceedings. *State v. Lopez*, 633 N.W.2d 774, 784 (Iowa 2001); *State v. Ceron*, 573 N.W.2d 587, 590 (Iowa 1997). “[W]e preserve such claims for postconviction relief proceedings, where an adequate record of the claim can be developed and the attorney charged with providing ineffective assistance may have an opportunity to respond to defendant's claims.” *Biddle*, 652 N.W.2d at 203.

As set forth above, Akquar can only succeed on his ineffectiveness claims by establishing both that his counsel breached an essential duty and that prejudice resulted. *Griffin*, 691 N.W.2d at 736-37. No record has yet been made before the trial court on these issues. Trial counsel has not been given an opportunity to explain his actions and the trial court has not considered and ruled on the ineffectiveness claims. Under these circumstances, we pass on these issues of ineffective assistance in this direct appeal and preserve them for a

possible postconviction proceeding. See *State v. Bass*, 385 N.W.2d 243, 245 (Iowa 1986).

We conclude the record before us is inadequate to address Akquar's claims of ineffective assistance of counsel on direct appeal. Accordingly, we affirm Akquar's convictions and preserve his specified claims of ineffective assistance of counsel as set forth above for a possible postconviction proceeding.

AFFIRMED.