

IN THE COURT OF APPEALS OF IOWA

No. 6-464 / 05-1908
Filed August 9, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

NICHOLAS ALLEN APPLEBY,
Defendant-Appellant.

Appeal from the Iowa District Court for Jones County, Kristin L. Hibbs,
Judge.

Nicholas Allen Appleby appeals from the judgment and sentence entered
on his conviction for willful injury causing bodily injury. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shellie L. Knipfer,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas W. Andrews, Assistant
Attorney General, Connie S. Ricklefs, County Attorney, and Robert A. Hruska,
Assistant County Attorney, for appellee.

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

VOGEL, P.J.

Nicholas Allen Appleby appeals from the judgment and sentence entered on his conviction for willful injury causing bodily injury in violation of Iowa Code section 708.4(2) (2005), asserting ineffective assistance of counsel.

At the plea proceeding, defense counsel made a record that Appleby would plead guilty in exchange for the State's recommendation of a five-year suspended sentence and placement at the Gary Hinzman Center. Prior to sentencing, Appleby violated terms of a preexisting probation. At sentencing, the State concurred with the presentence investigation report which recommended incarceration. While defense counsel advocated a suspended sentence, she did not object to the State's changed position.

It is apparent that this court lacks information upon which to evaluate defense counsel's performance. We therefore affirm Appleby's conviction and preserve his ineffectiveness claim for possible postconviction relief application. See Iowa Code § 814.7(3).

AFFIRMED.