

IN THE COURT OF APPEALS OF IOWA

No. 7-267 / 06-0942
Filed May 23, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOSHUA NATHANIEL ANDERSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, Mary Ann Brown, Judge.

Joshua Anderson appeals from his conviction for forgery. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Lisa Taylor, Assistant County Attorney, for appellee.

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

HUITINK, P.J.

Joshua Anderson appeals from his conviction for forgery in violation of Iowa Code section 715A.2 (2005). Anderson claims his conviction should be reversed because he was denied effective assistance of trial counsel. He specifically cites counsel's failure to file a motion for a new trial claiming the weight of the evidence was against the jury's verdict.

When the defendant alleges a violation of a constitutional right, our review is de novo. *Brewer v. State*, 444 N.W.2d 77, 79-80 (Iowa 1989). Ordinarily we preserve claims of ineffective assistance of counsel raised on direct appeal for postconviction proceedings to allow full development of the facts surrounding counsel's conduct. *State v. Atley*, 564 N.W.2d 817, 833 (Iowa 1997). We may resolve the claim of ineffective assistance of counsel on direct appeal if we find the record is sufficient to do so. *State v. Hildebrant*, 405 N.W.2d 839, 840-41 (Iowa 1987). The test to be applied to a claim of ineffective assistance of counsel is whether under the entire record and the totality of the circumstances counsel's performance was within the normal range of competence. *Snethen v. State*, 308 N.W.2d 11, 14 (Iowa 1981). To prevail on a claim of ineffective assistance of counsel, the defendant must show: (1) counsel failed to perform an essential duty and (2) prejudice resulted from that failure. *Meier v. State*, 337 N.W.2d 204, 206 (Iowa 1983). The defendant bears the burden of demonstrating ineffective assistance of counsel, and both prongs of the claim must be established by a preponderance of the evidence before relief can be granted. *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001). The defendant must show there is a reasonable probability that, but for counsel's unprofessional error, the

result of the proceeding would have been different. *Gering v. State*, 382 N.W.2d 151, 153-54 (Iowa 1986). A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.* at 154. A successful ineffective assistance of counsel claim may not be predicated on counsel's failure to file a meritless motion. *Schertz v. State*, 380 N.W.2d 404, 409 (Iowa 1985).

A motion for a new trial should be granted only if, after considering both inculpatory and exculpatory evidence, the jury's verdict was contrary to the weight of the evidence. *State v. Ellis*, 578 N.W.2d 655, 658-59 (Iowa 1998). A verdict is contrary to the weight of the evidence where "a greater amount of credible evidence supports one side of an issue or cause than the other." *Id.* at 658. "[T]he grant of a new trial on this ground should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict." *Id.* at 659 (quoting 3 Charles A. Wright, *Federal Practice and Procedure* § 553, at 245-48 (2d. ed. 1982)).

The record indicates Anderson was charged with forgery based on allegations he took Emily Poisel's checkbook, signed her name on two checks, and used the checks to purchase a CD changer from Annette Remick and merchandise from a local convenience store without Poisel's authorization. At trial, Poisel testified she did not authorize Anderson to sign or otherwise use her checks to purchase the CD changer from Remick or other merchandise from the convenience store. She also testified that she thought she had lost her checkbook and first learned of problems with her checking account when the bank called her to alert her to possible forgeries on her checking account.

Anderson testified that Poisel authorized him to sign or otherwise use her checks while they were living together and that his signature and use of the two checks at issue was consistent with her earlier authorization. On cross-examination, the State challenged Anderson's credibility by impeaching him with prior felony convictions for forgery and burglary.

In addition, Anderson called a bartender and a bar manager who testified that they cashed checks for Anderson that were signed by Poisel and that, as far as they were concerned, Anderson was authorized to do so. On cross-examination, however, both conceded that Poisel had not expressly communicated her authorization for Anderson to cash checks drawn on her account and that they had, in fact, relied on Anderson's assertions of Poisel's authorization.

Contrary to Anderson's assertions, the greater weight of the credible evidence does not support his claim that Poisel authorized his signature on or other use of her checks. Because the jury's guilty verdict is not contrary to the weight of the evidence, trial counsel did not breach any essential duty by failing to file a meritless motion for a new trial. Anderson's conviction is accordingly affirmed.

AFFIRMED.