

IN THE COURT OF APPEALS OF IOWA

No. 7-686 / 06-1409
Filed November 15, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER MICHAEL MARTIN,
Defendant-Appellant.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott,
Judge.

Christopher Michael Martin appeals from his conviction for third-degree burglary and second-degree theft alleging ineffective assistance of counsel.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Martha J. Lucey, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Steve Johnson, County Attorney, and Scott W. Nicholson, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

EISENHAUER, J.

Christopher Michael Martin (Martin) appeals his conviction and sentence, following a jury trial, for third-degree burglary and second-degree theft. Martin alleges ineffective assistance of counsel.

In May 2006, a garage in Newton, Iowa was broken into and a Kawasaki “four-wheeler” was stolen. The State’s theory was Martin broke into the garage with the intent to steal the four-wheeler and recruited friends to help him move it to Des Moines property belonging to Martin’s relatives. At trial, the friends and Martin all testified and there were some inconsistencies in the testimony. Martin testified and denied involvement in breaking into the garage to steal the four-wheeler.

Martin claims his trial counsel was ineffective in two ways: (1) for failing to object to the aiding and abetting instruction utilized by the court; and (2) for failing to request the court instruct the jury on his defense of compulsion.

When there is an alleged denial of constitutional rights, such as an allegation of ineffective assistance of counsel, we evaluate the totality of the circumstances in a de novo review. *Osborn v. State*, 573 N.W.2d 917, 920 (Iowa 1998). To prove trial counsel was ineffective Martin must show that counsel failed to perform an essential duty and that prejudice resulted from counsel's error. See *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); *Wemark v. State*, 602 N.W.2d 810, 814 (Iowa 1999). A reviewing court may look to either prong to dispose of an ineffective assistance claim. *Taylor v. State*, 352 N.W.2d 683, 685 (Iowa 1984).

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). We prefer to leave ineffective-assistance-of-counsel claims for postconviction relief proceedings. *State v. Lopez*, 633 N.W.2d 774, 784 (Iowa 2001). “[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.

The analysis of ineffective assistance on grounds of failure to object to jury instructions must be assessed in light of the theory of defense employed by the trial attorney. *State v. Blackford*, 335 N.W.2d 173, 178 (Iowa 1983). Additionally, “[i]mprovident trial strategy, miscalculated tactics, mistake, carelessness or inexperience do not necessarily amount to ineffective counsel.” *State v. Aldape*, 307 N.W. 2d 32, 42 (Iowa 1981). A defendant is not entitled to perfect representation, but rather only that which is within the range of normal competency. *State v. Artzer*, 609 N.W.2d 526, 531 (Iowa 2000).

As set forth above, Martin can succeed on his ineffectiveness claim only by establishing *both* that his counsel failed to perform an essential duty and that prejudice resulted. See *Wemark*, 602 N.W.2d at 814. The trial attorney has had no opportunity to explain either trial strategy or a theory of defense which could render the lack of an objection to the aiding and abetting instruction appropriate. Likewise, the record does not disclose whether the trial attorney had an appropriate strategy, theory of defense, or other reason to support the action of

not seeking an instruction on the defense of compulsion. This is not the “rare case” which allows us to decide ineffective assistance on direct appeal without an evidentiary hearing. See *State v. Straw*, 709, N.W.2d 128, 138 (Iowa 2006).

We preserve Martin’s claims of ineffective assistance of counsel for a possible postconviction relief proceeding.

AFFIRMED.