

**IN THE COURT OF APPEALS OF IOWA**

No. 7-852 / 07-0137  
Filed November 29, 2007

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**JEREMY DAVID CANADY,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Christine Dalton,  
District Associate Judge.

Jeremy Canady appeals following his conviction for assault causing bodily  
injury. **REVERSED AND REMANDED.**

Mark C. Smith, State Appellate Defender, and David Adams, Assistant  
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget Chambers, Assistant Attorney  
General, William Davis, County Attorney, and Rex Ridenour, Assistant County  
Attorney, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Baker, JJ.

**BAKER, J.**

Jeremy Canady appeals following his conviction for assault causing bodily injury. We reverse and remand.

**BACKGROUND FACTS AND PROCEEDINGS.**

On June 26, 2006, the State filed a trial information charging Canady with assault causing bodily injury, in violation of Iowa Code section 708.2(2) (2005). On December 12, 2006, Canady signed a written waiver of jury trial. On January 9, 2007, Canady appeared for a bench trial and the court later entered a ruling finding him guilty as charged. It sentenced Canady to imprisonment not to exceed 180 days and ordered that it be served consecutively to a sentence he was then serving. The court never engaged Canady in any on-the-record colloquy concerning the waiver of his right to a jury trial.

On appeal Canady challenges his conviction on grounds of ineffective assistance of counsel. In particular, he maintains the trial court did not conduct an adequate colloquy with him before accepting his waiver of his right to a jury trial, and that effective counsel would have ensured that such a colloquy took place.

**STANDARD OF REVIEW.**

We review claims of ineffective assistance of counsel de novo. *State v. McBride*, 625 N.W.2d 372, 373 (Iowa Ct. App. 2001). Generally, ineffective claims are preserved for post-conviction relief. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994). However, claims can be resolved on direct appeal when the record adequately presents the issue. *Id.* The record in this case is adequate to decide this issue on direct appeal.

**ANALYSIS.**

To succeed with a claim of ineffective assistance of counsel, a defendant typically must prove the following two elements: (1) counsel failed to perform an essential duty, and (2) defendant was prejudiced by counsel's error. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984).

Iowa Rule of Criminal Procedure 2.17(1) states, “[c]ases required to be tried by jury shall be so tried unless the defendant voluntarily and intelligently waives a jury trial in writing and on the record.” The Iowa Supreme Court construed this provision in *State v. Liddell*, 672 N.W.2d 805 (Iowa 2003), holding the “on the record” language in this provision required some in-court colloquy or personal contact between the court and the defendant in order to ensure the defendant's waiver is knowing, voluntary, and intelligent. *Liddell*, 672 N.W.2d at 812. *Liddell* also suggested a five-part inquiry the in-court colloquy may involve, but the court clarified that this inquiry is not “black-letter rules nor a ‘checklist’ by which all jury-trial waivers must be strictly judged.” *Id.* Substantial compliance with this five-part inquiry is acceptable. *Id.*

Here, the district court did not conduct any in-court colloquy regarding Canady's waiver of jury trial. It did not address to him what rights he was giving up by waiving his right to a jury trial nor did it ask whether Canady truly understood the content of the waiver he had signed. In light of *Liddell*, the record does not demonstrate a voluntary and intelligent waiver. Trial counsel's failure to ensure compliance with the requirement of rule 2.17(1) is a breach of an essential duty.

Our supreme court has held that when a counsel fails to ensure compliance with Iowa Rule of Criminal Procedure 2.17(1), prejudice is presumed. *State v. Stallings*, 658 N.W.2d 106, 112 (Iowa 2003). It reasoned that, “[b]ecause the right to a jury trial is so fundamental to our justice system, we conclude this is one of those rare cases of a ‘structural’ defect in which prejudice is presumed.” *Id.*

The State further invites us to overrule *Liddell*. Our role is to apply existing principles, not change them. Iowa R. App. 6.401(3). We decline the invitation.

Because there was no on-the-record colloquy at the trial court level, counsel was ineffective by failing to ensure there was a valid waiver of a jury trial. We therefore reverse Canady's conviction and remand for trial to a jury unless Canady properly waives his right to a jury trial.

**REVERSED AND REMANDED.**