

IN THE COURT OF APPEALS OF IOWA

No. 8-708 / 07-1302
Filed October 29, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT ALAN FRY,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,
Judge.

Robert Alan Fry appeals his conviction for burglary in the third degree.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney
General, Michael Walton, County Attorney, and Jerald Feuerbach, Assistant
County Attorney, for appellee.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

MILLER, J.

Robert Alan Fry appeals his conviction for burglary in the third degree in violation of Iowa Code section 713.6A (2007). He claims his trial counsel was ineffective for: (1) presenting evidence of his prior conviction for burglary, failing to object to the State presenting evidence on this conviction, and not requesting a court determination on the prejudicial effect of such evidence; (2) failing to object and move for mistrial when the prosecutor made an improper comment on Fry's post-arrest silence; and (3) failing to object to and move for mistrial during closing arguments based on the State's comments on Fry's credibility. The State argues that one or more of Fry's claims involved a reasonable trial strategy by defense counsel and thus no breach of duty occurred, and that Fry failed to show resulting prejudice on any of his three claims.

In order to prevail on his claims of ineffective assistance of counsel, Fry must show (1) counsel failed to perform an essential duty, and (2) prejudice resulted. See *State v. Lane*, 726 N.W.2d 371, 393 (Iowa 2007). We evaluate the totality of the relevant circumstances in a de novo review. *Id.* at 392. 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 a postconviction relief proceeding. *State v. Lopez*, 633 N.W.2d 774, 784 (Iowa 2001). Such a proceeding allows an adequate record of the claim to 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.

An adequate record is important because “[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).

Fry’s trial attorney has had no opportunity to explain her strategy and actions. At least the first of Fry’s claims may involve trial strategy, interpretation and application of a rule of evidence and case law, and potential prejudice to Fry. This is not the “rare case” which allows us to decide that claim on direct appeal. See *State v. Straw*, 709 N.W.2d 128, 138 (Iowa 2006). We therefore preserve that claim for a possible postconviction proceeding, and in the interest of judicial economy preserve Fry’s other two claims as well.

AFFIRMED.