

IN THE COURT OF APPEALS OF IOWA

No. 9-275 / 08-1183
Filed May 29, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DEMETRIUS JOHNSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Denver D. Dillard,
Judge.

Defendant appeals his conviction and sentence for ongoing criminal
conduct. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Christen Douglass, Assistant Attorney
General, Janet M. Lyness, County Attorney, and Meredith Rich-Chappell,
Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

EISENHAUER, J.

This is Demetrius Johnson's second appeal of his 2003 conviction and sentence for ongoing criminal conduct. In March 2005, we remanded this case to the district court "for application of the 'weight of the evidence' standard in ruling on Johnson's motion for new trial." *State v. Johnson*, No. 5-004 (Iowa Ct. App. March 31, 2005). We noted the sole issue is "whether the weight of the evidence supports the conclusion that Johnson had the knowledge required" under the criminal statute. *Id.* Additionally, we directed the court to "asses the weight of the evidence without consideration of the testimony asserted by Johnson to be hearsay." *Id.* On remand, the court again denied Johnson's motion for new trial and this appeal followed.

Johnson argues the court "failed to weigh the evidence and failed to analyze the case considering the circumstantial nature of the evidence." Johnson also claims the court "failed to exclude testimony alleged to be hearsay." We review for correction of errors at law. Iowa R. App. P. 6.4.

We find no merit to Johnson's claims. The court identified and applied the weight of the evidence standard. Further, the hearing transcript demonstrates the court's ruling was not based on hearsay evidence, but rather was based on Johnson's actions and statements as they related to his "knowing participation" in the fraudulent scheme.

Johnson's final argument is he received ineffective assistance of counsel by: (1) counsel's failure to specifically argue the particular hearsay to be

excluded, and (2) counsel's failure to make the prior appellate brief a part of the record.

In order to prevail on his claims of ineffective assistance of counsel, Johnson 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 postconviction relief proceedings. *State v. Lopez*, 633 N.W.2d 774, 784 (Iowa 2001). Those proceedings allow 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.

This is not the "rare case" which allows us to decide Johnson's ineffective assistance claims on direct appeal without an evidentiary hearing. See *State v. Straw*, 709 N.W.2d 128, 138 (Iowa 2006). We preserve Johnson's claims for possible postconviction relief proceedings.

AFFIRMED.