

IN THE COURT OF APPEALS OF IOWA

No. 9-470 / 07-2044
Filed July 22, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

THOMAS MORGAN DONELSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Harrison County, James M. Richardson, Judge.

Defendant appeals resentencing after remand. **AFFIRMED.**

Drew H. Kouris, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, Jennifer Mumm, County Attorney, and Marcus Gross, Assistant County Attorney, for appellee.

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

EISENHAUER, J.

This is the third appeal concerning Donelson's conviction for operating while intoxicated (third offense) as an habitual offender. Initially, Donelson was sentenced to an indeterminate five-year prison sentence. We granted the State's petition for a writ of certiorari and ruled the Iowa Code required an indeterminate fifteen-year prison sentence. *State v. Iowa Dist. Ct. for Harrison County*, No. 05-1472 (Iowa Ct. App. Nov. 30, 2006). We vacated the sentence and remanded for resentencing. *Id.*

After resentencing, Donelson appealed claiming a denial of his right of allocution at the resentencing hearing. We agreed and ruled: "The district court erred in denying Donelson's right to allocution." *State v. Donelson*, No. 07-0304 (Iowa Ct. App. Sept. 6, 2007). Consequently, we vacated Donelson's sentence and remanded for resentencing. *Id.*

After the remand, but before the resentencing hearing, Donelson filed motions seeking to withdraw his prior admissions of two prior O.W.I. offenses and two prior felony convictions and seeking a jury trial on those issues. Treating the motions as a motion for new trial, the district court overruled the defense requests stating the issues raised involved "trial issues that were addressed at the time of trial and they will not be addressed today." The court explained:

This court specifically addressed counsel as well as [Donelson] at the time of the initial trial on this regard. It was submitted that there were prior offenses. This is not part of the court of appeals decision which the court of appeals addressed and overturned the sentencing, saying that, in essence, [Donelson] should be allowed to speak at his sentence

Donelson now appeals arguing the district court “abused its discretion in refusing him his right to withdraw his plea and proceed with a jury trial on both the O.W.I. and habitual offender enhancements.” We review the post-remand actions of the district court in carrying out a mandate of an appellate court for legal error. *Winnebago Indus. v. Smith*, 548 N.W.2d 582, 584 (Iowa 1996).

We find no error. When an appellate court remands a case to a trial court “for a special purpose,” the district court “is limited to do the special thing authorized by the appellate court in its opinion and nothing else.” *In re Marriage of Davis*, 608 N.W.2d 766, 769 (Iowa 2000). “The district court has no authority to do anything except to proceed in accordance with the mandate.” *Id.* “Any action contrary to or beyond the scope of the mandate is null and void.” *State v. O’Shea*, 634 N.W.2d 150, 158 (Iowa Ct. App. 2001). Here the remand to the district court was for the sole and limited purpose of resentencing Donelson after affording him the right to allocution. The district court was wholly without authority to consider Donelson’s efforts to litigate issues outside the scope of the remand.

Donelson next argues both his trial and appellate counsel were ineffective. 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 to enable full development of the record and to afford trial counsel an opportunity to respond. *State v. Lopez*, 633 N.W.2d 774, 784 (Iowa 2001). “Even a lawyer is entitled to his day in court, especially when his professional reputation is

impugned.” *State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978). Because we find the record insufficient to address Donelson’s ineffective assistance of counsel claims on direct appeal, we preserve his claims for possible postconviction relief proceedings.

Accordingly, we affirm Donelson’s conviction and sentence and preserve his ineffective assistance of counsel claims.

AFFIRMED.