

IN THE COURT OF APPEALS OF IOWA

No. 9-974 / 09-0591
Filed January 22, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL WAYNE SHULL,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, J. Hobart Darbyshire,
Judge.

Michael Shull appeals following conviction and sentence for theft in the
second degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Thomas Gaul, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney
General, Michael J. Walton, County Attorney, and Joseph Grubisich, Assistant
County Attorney, for appellee.

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

DANILSON, J.

On July 16, 2007, the State filed a complaint charging Michael Shull with theft in the second degree and burglary in the third degree. These charges arose from several burglaries and thefts in Scott County in February and April 2007.¹ Sometime later, Shull became imprisoned in Illinois. In early May 2008, Shull wrote a letter to the court in Scott County requesting a speedy trial, and asking to quash the arrest warrants in three cases. The court wrote a letter back to Shull explaining the proper procedures under the Interstate Agreement on Detainers Compact (IAD). The court also advised Shull that his letter did “not begin the process to bring [him] back to deal with [his] charges.”

On July 9, 2008, Shull made his initial appearance in Scott County. On July 18, 2008, the State filed a trial information charging Shull with two counts of theft in the second degree and three counts of burglary in the third degree. Shull filed a written arraignment demanding a speedy trial on July 24, 2008. Trial was continued in early September because the court granted Shull’s request for appointment of new counsel.² Shull’s new attorney filed a waiver of his right to be tried within ninety days. Several months later, Shull again requested new counsel. Trial was continued until late January 2009, and the court scheduled a hearing on Shull’s request for substitute counsel. Shull mentioned to the court his right to trial within one-hundred eighty days under the IAD, and the court

¹ At the plea hearing, Shull admitted to taking, with intent to deprive, a Honda generator worth \$1800 from a construction site in Davenport on February 26, 2007.

² Shull had three different court-appointed counsels throughout the pendency of these proceedings.

advised him to discuss with an attorney and file a motion to dismiss if appropriate.

After a hearing on February 11, 2009, the court denied Shull's request for substitute counsel. Shull's attorney thereafter filed a motion for a hearing on a pending motion to suppress and a discovery request. The motions were fixed for hearing on March 3, 2009; however, the motions were not reached on that day as the court granted Shull's request for substitute counsel. During this hearing Shull acknowledged that he understood that if he received substitute counsel his trial would have to be continued. Shull also mentioned the IAD speedy trial period at this hearing, but the court advised him to consult with his new attorney about the issue.

On March 14, 2009, Shull's new counsel filed a motion to dismiss based on the State's alleged failure to comply with the one-hundred eighty day speedy trial requirement under the IAD. At a hearing on April 8, 2009, fixed on the three pending motions, Shull's attorney presented the court with a written memorandum of a proposed plea agreement signed by Shull.³ Thus, in lieu of the hearing on the three motions, a guilty plea proceeding was held. Shull expressed his understanding of the charges against him, his trial rights, the applicable penalties, and admitted to a factual basis for the plea. The court accepted Shull's proposed plea as knowing, voluntary, and supported by a factual basis. Shull waived his right to file a motion in arrest of judgment, and the court imposed sentence pursuant to the plea agreement. Shull now appeals,

³ In the plea agreement, Shull agreed to plead guilty to one count of theft in the second degree (count IV) in exchange for the dismissal of counts I, II, III, and V, and the State's recommendation of concurrent sentence terms with his Illinois sentences.

contending his trial counsel was ineffective in permitting Shull's guilty plea without seeking a hearing on his motion to dismiss for violation of speedy trial under the IAD.

We conduct a de novo review of ineffective assistance of counsel claims. *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008). To establish a claim of ineffective assistance of counsel, a defendant must prove (1) counsel failed to perform an essential duty and (2) prejudice resulted to the extent it denied the defendant a fair trial. *Id.* Ordinarily, we preserve ineffective assistance of counsel claims for postconviction proceedings to allow the facts to be developed and give the allegedly ineffective attorney an opportunity to explain his or her conduct, strategies, and tactical decisions. See *State v. Bearse*, 748 N.W.2d 211, 214 (Iowa 2008); *State v. DeCamp*, 622 N.W.2d 290, 296 (Iowa 2001). No record has yet been made before the district court on these issues and the district court has not ruled on the claims. See *State v. Bass*, 385 N.W.2d 243, 245 (Iowa 1986). We conclude the record here is inadequate to address Shull's claim. We therefore preserve his claim for possible postconviction relief proceedings.

AFFIRMED.