

**IN THE COURT OF APPEALS OF IOWA**

No. 2-875 / 12-0573  
Filed November 15, 2012

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

**vs.**

**TOMMIE CHESTER MOORE SR.,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Cheryl Traum,  
District Associate Judge.

The defendant appeals his conviction on two counts of driving while  
barred alleging ineffective assistance of counsel. **AFFIRMED.**

John J. Sherman, Davenport, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney  
General, Michael J. Walton, County Attorney, and Robert C. Bradfield, Assistant  
County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

**MULLINS, J.**

Tommie Moore appeals following his guilty plea to two counts of driving while barred-habitual offender, in violation of Iowa Code sections 321.555(1) and .561 (2011). Moore filed a written guilty plea in both cases and was sentenced to serve up to two years in prison on each count, though the sentences were ordered to run concurrently. Moore alleges his trial counsel rendered ineffective assistance in failing to file a motion to suppress the evidence related to the second count as he asserts the officer did not have a reasonable suspicion to initiate the traffic stop.

An ineffective-assistance-of-counsel claim may be raised and decided on direct appeal when the record is adequate to address the claim. Iowa Code § 814.7(2), .7(3). In this case, the only information regarding the second traffic stop is attached to the minutes of testimony. This information only states a traffic stop was initiated. It does not provide any information regarding the reason for the stop. Based on the current record on appeal, we are unable to determine whether counsel breached an essential duty in not filing a motion to suppress the evidence related to the second count or whether Moore has been prejudiced by this alleged error. Therefore, we preserve Moore's ineffective-assistance-of-counsel claim for possible postconviction-relief proceedings. See *State v. Johnson*, 784 N.W.2d 192, 198 (Iowa 2010) ("If . . . the court determines the claim cannot be address on appeal, the court must preserve it for a postconviction-relief proceeding, regardless of the court's view of the potential viability of the claim.").

Moore also asserts the court abused its discretion when it imposed the maximum sentence on the first count because it considered the second, illegal stop. Moore asserts if counsel had filed the motion to suppress the evidence related to the second stop, the court would never have been presented with the evidence of this subsequent violation at sentencing. As stated above, on the basis of this record, we cannot conclude Moore's trial counsel was ineffective in not filing a motion to suppress the evidence related to the second count. The sentence imposed by the court was within the statutory limits, and nothing in this record leads us to believe the court abused its discretion in sentencing Moore to the maximum sentence considering his lengthy criminal history.<sup>1</sup> See *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002) (“[T]he decision of the district court to impose a particular sentence within the statutory limits is cloaked with a strong presumption in its favor, and will only be overturned for an abuse of discretion or the consideration of inappropriate matters.”). We therefore affirm Moore's conviction and sentence.

**AFFIRMED.**

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<sup>1</sup> For the reasons stated in the foregoing paragraph, we likewise preserve for postconviction relief the extent to which Moore challenges the court's consideration of the conviction arising out of the second stop in the exercise of its discretion in sentencing on this charge.