

IN THE COURT OF APPEALS OF IOWA

No. 2-894 / 11-2005
Filed October 31, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KENNETH JAMES SHADOW,
Defendant-Appellant.

Appeal from the Iowa District Court for Butler County, Peter B. Newell,
District Associate Judge.

Kenneth Shadlow appeals, contending the sentence imposed by the
district court was inappropriate and that his trial counsel provided ineffective
assistance. **AFFIRMED.**

Andrew C. Abbott of Abbott Law Office, P.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney
General, Gregory M. Lievens, County Attorney, and David Kuehner, Assistant
County Attorney, for appellee.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

DOYLE, P.J.

On March 22, 2011, Kenneth Shadlow was charged in Butler County by trial information with third-degree burglary, a class D felony, in violation of Iowa Code sections 713.1 and 713.6A (2011). On November 4, 2011, the State moved to amend the trial information to add a charge of third-degree theft, an aggravated misdemeanor, in violation of sections 714.1 and 714.2(3). Shadlow filed a written waiver of rights and guilty plea on November 16, 2011, wherein he pled guilty to the third-degree-theft charge. The district court filed its judgment and sentence the same day, sentencing Shadlow pursuant to the terms of the plea agreement. The court imposed a suspended two-year sentence to be served concurrently with two “Black Hawk County cases,” two years probation, and a suspended fine. The third-degree-burglary charge was dismissed pursuant to the plea agreement.

Shadlow now appeals. He challenges his sentence, asserting

[t]he court mainly focused on [Shadlow’s] criminal history and not the nature of the offenses nor the circumstances surrounding the offenses. The court abused its discretion in first, not having recused himself, but in having sentenced [Shadlow] to a sentence outside the scope of sentencing on a charge pled to in this case.

Shadlow’s contention concerning the court’s denial of recusal is devoid of any factual argument or citation to authority. We therefore deem this issue waived. See Iowa R. App. P. 6.903(2)(g)(3). Additionally, Shadlow’s assertion concerning the scope of his sentence is groundless. His sentence was within statutory limits. See Iowa Code § 903.1(2).

The sentencing court incorporated the parties’ plea agreement in the sentence. The sentence was therefore not the product of the exercise of the trial

court's discretion but of the process of giving effect to the parties' agreement. See *State v. Cason*, 532 N.W.2d 755, 756-57 (Iowa 1995); *State v. Snyder*, 336 N.W.2d 728, 729 (Iowa 1983). Furthermore, the record does not support Shadlow's contention that the district court focused on his criminal history and not the nature of the offense or surrounding circumstances. The preprinted form judgment and sentence indicates the sentence is ordered "for the protection of society [and] the rehabilitation of the [d]efendant." The sentencing form does not set forth any additional reasons for the sentence imposed, nor do any additional reasons appear in the record before us. Finally, Shadlow points us to nothing in the record referencing the nature of the offense or surrounding circumstances. See Iowa R. App. P. 6.903(2)(g)(3). We find no abuse of discretion on the part of the district court in sentencing Shadlow.

Shadlow also asserts his trial counsel was ineffective for having pressured him into signing the plea agreement. The facts upon which Shadlow relies for this proposition are not in the record before us. We do not address issues based on information not contained in the record. *Rasmussen v. Yentes*, 522 N.W.2d 844, 846 (Iowa Ct. App. 1994). The record is not adequate for us to address this claim on direct appeal, and we must preserve it for possible postconviction relief proceedings. See *State v. Johnson*, 784 N.W.2d 192, 197 (Iowa 2010) (discussing that ineffective-assistance-of-counsel claims should usually be preserved for postconviction relief proceedings so that a defendant may develop a more complete record, and regardless of our view of the vitality of the claim, we must preserve it for postconviction relief proceedings).

For the reasons stated above, we affirm Shadlow's judgment and sentence entered following his guilty plea, and we preserve his claim of ineffective assistance of counsel for possible postconviction relief proceedings.

AFFIRMED.