

IN THE COURT OF APPEALS OF IOWA

No. 3-339 / 12-0327
Filed May 30, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOSHUA MICHAEL STROTHER,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Marlita A. Greve,
Judge.

Joshua Strother seeks to set aside his guilty pleas. **AFFIRMED.**

Steven J. Drahozal of Drahozal Law Office, P.C., Dubuque, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney
General, Michael J. Walton, County Attorney, and Amy Devine, Assistant County
Attorney, for appellee.

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

DANILSON, J.

Joshua Strother pled guilty to possession of a controlled substance with intent to deliver (marijuana) and possession of a controlled substance (Lorazepam). He seeks to set aside his guilty pleas, contending trial counsel should have filed a motion to suppress the warrantless search of his vehicle.

Strother did not file a motion in arrest of judgment and, consequently, his claim must be raised as one of ineffective assistance of counsel. See *State v. Straw*, 709 N.W.2d 128, 132 (Iowa 2006) (concluding the defendant's failure to file a motion in arrest of judgment bars direct appeal of his conviction).

To establish a claim of ineffective assistance of counsel, Strother must demonstrate his trial counsel's performance was constitutionally deficient, and prejudice resulted. See *id.* at 133. If the record is adequate to address the claim, we may do so on direct appeal; otherwise, the defendant may raise the claim in a postconviction action. *State v. Fountain*, 786 N.W.2d 260, 263 (Iowa 2010).

Here, Strother contends his trial counsel should have filed a motion to suppress because the search of his vehicle was premised upon his status as a probationer.¹ However, the record also suggests the search was premised upon

¹ In light of our ruling, it is unnecessary to determine if the principles espoused in *State v. Ochoa*, 792 N.W.2d 260, 291 (Iowa 2010), and *State v. Baldon*, ___ N.W. ___, ___, 2013 WL 1694553 at *8-16 (Iowa April 19, 2013), both concerning warrantless searches of parolees, apply to a search of a probationer's vehicle; and if applicable, whether failure to file a motion to suppress under these circumstances would constitute ineffective assistance of counsel.

We note, however, that the *Baldon* court wrote, [W]e largely set aside the cases dealing with probation agreements. These cases are of limited value in analyzing the consent issue in parole

Strother's consent. In light of this uncertainty, we find the record inadequate, and we preserve Strother's ineffectiveness claim for possible postconviction relief proceedings.

AFFIRMED.

agreements because probationers often end up on probation through plea bargaining and, consequently, maintain a vastly superior bargaining power than parolees. Such a probationer has the choice of demanding a trial to seek his or her freedom, which many courts find gives rise to the type of bargaining power that renders probation agreements consensual.
___ N.W.2d at ___, 2013 WL 1694553 at *8.