

**IN THE COURT OF APPEALS OF IOWA**

No. 9-814 / 09-0460  
Filed November 12, 2009

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

**vs.**

**DOUGLAS J. BOHRN,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Woodbury County, Duane E. Hoffmeyer (guilty plea) and Gary E. Wenell (sentencing), Judges.

Douglas Bohrn appeals from the judgment and sentence imposed following his guilty plea to two counts of forgery. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Patrick Jennings, County Attorney, and James Loomis, Assistant County Attorney, for appellee.

Considered by Potterfield, P.J., Danilson, J., and Mahan, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**POTTERFIELD, P.J.****I. Background Facts and Proceedings**

In September 2007, Denise Uhl lost her checkbook and reported the loss to the police. In December 2007, she received notification that someone was using her checks. Officers Kenneth Welch, Jacob Noltze, and Bryan Noll participated in investigating the matter. The officers viewed store surveillance videos in an attempt to identify the individual writing the checks, but the video quality was too poor to make an identification. However, the videos showed the checks were passed by a woman with children and a man.

On March 18, 2008, Shana Walsh went to the police station and turned herself in. She admitted she was the woman shown in the surveillance videos and that she had participated in passing Uhl's checks. Walsh also told police that the man shown in the videos was her ex-boyfriend, Douglas Bohrn. She claimed Bohrn was involved in passing Uhl's checks and that he had signed several of them himself.

Based on Walsh's statements, on July 21, 2008, the State filed a trial information charging Bohrn with two counts of forgery as a habitual offender in violation of Iowa Code section 715A.2(2)(a)(3) (2007). Bohrn initially pleaded not guilty, but he later changed his plea to guilty pursuant to a plea agreement. The plea agreement provided that in exchange for Bohrn's guilty plea to two charges of forgery, the State would eliminate the habitual offender designation. On February 27, 2009, the district court accepted Bohrn's guilty plea to two counts of forgery and later sentenced him to two consecutive terms of five years as well as payment of fines and restitution, according to the plea agreement.

Bohrn now appeals from the judgment and conviction, arguing his counsel was ineffective for failing to file a motion to dismiss based on the lack of corroboration of Walsh's statements, thus rendering his plea involuntary.

## **II. Standard of Review**

Because Bohrn asserts a constitutional violation, we review the totality of the circumstances de novo. *Taylor v. State*, 352 N.W.2d 683, 684 (Iowa 1984).

## **III. Ineffective Assistance of Counsel**

Bohrn asserts he received ineffective assistance of counsel because trial counsel failed to file a motion to dismiss based on the lack of corroboration of Walsh's statements. In order to prove that his counsel was ineffective, Bohrn must show that: (1) his counsel failed to perform an essential duty; and (2) prejudice resulted from that failure. *Id.* We can affirm on appeal if either element is lacking. *Id.*

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. *State v. Lopez*, 633 N.W.2d 774, 784 (Iowa 2001). "[W]e preserve such claims for postconviction relief proceedings, where an adequate record of the claim can be developed . . . ." *Biddle*, 652 N.W.2d at 203.

Bohrn is required to show that, but for counsel's error, he would not have pleaded guilty. Where there is no evidence showing whether a defendant suffered prejudice from his counsel's alleged ineffectiveness in connection with his guilty plea, the defendant must raise his ineffective assistance claim in an action for post-conviction relief. See *State v. Straw*, 709 N.W.2d 128, 138 (Iowa

2006). We conclude the record before us is inadequate to address Bohrn's claim of ineffective assistance on direct appeal. We therefore preserve the issue for a possible postconviction proceeding. See *State v. Bass*, 385 N.W.2d 243, 245 (Iowa 1986).

**AFFIRMED.**