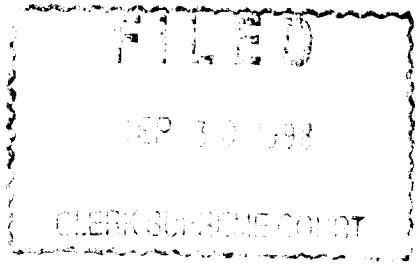
IN THE COURT OF APPEALS OF IOWA

No. 8-374 / 97-1998
Filed September 30, 1998



STATE OF IOWA,
Appellee,

vs.

PEDRO GONZALEZ-PEREZ,
Appellant.

Appeal from the Iowa District Court for Jones County, Thomas M. Horan, Judge.

Defendant appeals the judgment and sentence entered upon his conviction of interference with official acts in violation of Iowa Code sections 719.1 and 708.1(1) (1995). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shellie L. Knipfer, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, and Connie S. Ricklefs, County Attorney, for appellee.

Considered by Cady, C.J., and Streit and Mahan, JJ.

PER CURIAM

The defendant appeals the judgment and sentence entered upon his conviction of interference with official acts in violation of Iowa Code sections 719.1(2) and 708.1(1) (1995). He argues he received ineffective assistance of trial counsel because counsel allowed him to enter a guilty plea in the absence of a factual basis for the offense. We affirm.

The State charged the defendant with two counts of interference with official acts. The defendant entered a guilty plea to count II of the trial information pursuant to an agreement wherein the State dismissed count I. Count II arose out of an incident that took place at the Iowa State Men's Reformatory infirmary. The defendant threw the liquid contents of a cup at a correctional officer as the officer was distributing meals. The court accepted defendant's plea and sentenced him to an indeterminate term of imprisonment not to exceed two years to run consecutively to the sentence which defendant was serving.

On appeal, the defendant argues his trial counsel was ineffective in allowing him to plead guilty to the offense where there was not a factual basis for one of the elements. Although admitting he assaulted the officer, the defendant maintains there was no evidence showing he resisted, obstructed, or interfered with the correctional officer in the performance of his duties. When an appellant asserts a violation of constitutional safeguards—such as ineffective assistance of counsel—we make our own evaluation based on the totality of the circumstances. *Hinkle v. State*, 290

N.W.2d 28, 30 (Iowa 1980). This is the equivalent of de novo review. *Id.*; *State v. Pearson*, 547 N.W.2d 236, 240 (Iowa App. 1996).

Generally, we preserve ineffective assistance of counsel claims for postconviction proceedings to allow trial counsel an opportunity to defend the charge. *State v. Mulder*, 313 N.W.2d 885, 890 (Iowa 1981); *State v. Nebinger*, 412 N.W.2d 180, 191-92 (Iowa App. 1987). We depart from this preference if the record on direct appeal is sufficient to evaluate the merits of a defendant's ineffective assistance of counsel claim. *Id.* This may occur, for instance, when the attorney's conduct cannot be explained as improvident strategy, miscalculated tactics, or mistaken judgment. *State v. Goff*, 342 N.W.2d 830, 838 (Iowa 1983). A defendant has the burden of proving by a preponderance of the evidence his attorney did not perform an essential duty and, as a result, he was prejudiced. *Id.* In alleging ineffective assistance, a defendant must overcome the strong presumption counsel acted competently. *State v. Ray*, 516 N.W.2d 863, 865 (Iowa 1994).

Although we agree with the defendant "there is no strategic reason for trial counsel to permit a client to plead guilty to a charge for which there is no factual basis,"[1] we cannot agree the charge in this case lacks a factual basis. On the basis of the facts presented in the various prior challenges, the Iowa Supreme Court has almost

---

[1] Defendant cites *State v. Hack*, 545 N.W.2d 262, 263 (Iowa 1996) to support his assertion.

always found substantial compliance with the requirement to show a factual basis.[2] In the case before us, the defendant admitted the assault upon the officer. He admitted the State could prove each and every element of the charge. Defense counsel stated, after review of the case and discussions with the defendant, there was a factual basis for the plea. Defendant signed a statement saying the minutes of testimony were accurate. The minutes reveal the officer found the assault insulting and offensive and that the liquid struck his pants. We determine defense counsel did not fail to perform an essential duty and, therefore, did not render ineffective assistance to the defendant.

Defendant also suggests that, since he does not speak or understand English and an interpreter was used at the plea proceeding, "it should not be assumed that defendant understood the legal meaning of 'interference with official acts.'" We disagree. The record contains defense counsel's statement he explained the allegations. The translator stated he translated the written plea into Spanish for the defendant. The defendant stated he read the plea with his translator and understood it in Spanish. We do not see any subtle nuances[3] in the charge which would suggest the defendant's plea was based on a misunderstanding of the charge.

AFFIRMED.

---

[2] *See, e.g., Young v. Brewer*, 190 N.W.2d 434 (Iowa 1971); *State v. Quinn*, 197 N.W.2d 624 (Iowa 1972); *State v. Taylor*, 211 N.W.2d 264 (Iowa 1973); *State v. Wisher*, 217 N.W.2d 618 (Iowa 1974); *but see State v. Hauan*, 361 N.W.2d 336 (Iowa App. 1984).

[3] *See, e.g., State v. Galbreath*, 525 N.W.2d 424 (Iowa 1994).