IN THE COURT OF APPEALS OF IOWA

No. 1-259 / 00-721
Filed May 23, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DENNIS LEE DAGGETT,
Defendant-Appellant.

FILED
MAY
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge.

Defendant appeals from the judgment and sentence entered upon his guilty plea to operating a motor vehicle without the owner's consent. **AFFIRMED.**

Lori Holm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Donald D. Stanley, Jr., Assistant Attorney General, John P. Sarcone, County Attorney, and Jeffrey Noble, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Zimmer and Hecht, JJ.

ZIMMER, J.

Dennis Lee Daggett appeals from the judgment and sentence entered upon his guilty plea to operating a motor vehicle without the owner's consent in violation of Iowa Code section 714.7 (1999). He contends the court abused its discretion in failing to state on the record reasons for its sentence. He also asserts trial counsel was ineffective in allowing him to plead guilty to a charge for which no factual basis exists and in failing to investigate the offense and explore defenses. We affirm.

I. Background Facts and Proceedings. The defendant, Dennis Daggett, met with Dee Jay Bulman to discuss purchasing Bulman's 1989 Pontiac Bonneville. Daggett agreed to purchase Bulman's car. On February 18, 2000, Daggett took the vehicle on the pretext of going to get money to pay for the car. However, he failed to return with the car or the money. Bulman spent several days trying to locate Daggett and the car. Bulman reported the car stolen on February 23. The next day, a Des Moines police officer stopped a motorist driving Bulman's Bonneville for running a stop sign. Daggett was the driver and sole occupant.

The State charged Daggett with the class "D" felony offense of second-degree theft. Daggett reached a plea agreement with the State. Under the terms of the agreement, Daggett was allowed to plead guilty to a lesser offense with the understanding that he would receive a two-year prison term at sentencing. He subsequently pled guilty to the amended charge of operating a motor vehicle without the owner's consent, an aggravated misdemeanor, in violation of Iowa

Code section 714.7. The court followed the plea agreement and sentenced Daggett to a term of not more than two years in prison.

Daggett appeals. He contends trial counsel was ineffective in allowing him to plead guilty to a charge that lacked a factual basis, failing to file a motion in arrest of judgment, and failing to investigate the case and explore defenses. He also asserts the court abused its discretion by failing to state on the record the reasons for its sentence.

II. Sentencing. We review the court's sentencing decision for an abuse of discretion. *State v. Laffey,* 600 N.W.2d 57, 62 (Iowa 1999). "An abuse of discretion is found only when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Privitt,* 571 N.W.2d 484, 486 (Iowa 1997).

Daggett contends the district court abused its discretion by failing to state on the record its reasons for imposing the two-year sentence. It is true that Iowa Rule of Criminal Procedure 22(3)(d) requires the court to state on the record its reasons for selecting a particular sentence. However, where the State and the defendant have reached a plea agreement and the sentencing court incorporates that agreement in the sentence, any failure to abide by rule 22(3)(d) is harmless. *State v. Carson,* 532 N.W.2d 755, 756 (Iowa 1995) (citing *State v. Snyder,* 336 N.W.2d 728, 729 (Iowa 1983)). While it is the better practice for the court to state reasons in every case, failure to do so in cases where the court has no discretion does not warrant remand for resentencing. *Snyder,* 336 N.W.2d at 729.

In Daggett's case, a statement of reasons for imposition of the sentence would serve no practical purpose. At sentencing, the prosecutor informed the

court that the parties had agreed to a two-year prison sentence. Defendant's counsel reiterated the agreement to the court. The court then sentenced Daggett pursuant to the plea agreement. It is clear from the record that the sentencing court was giving effect to the plea agreement. Under these circumstances, we do not find the district court abused its discretion in failing to state on the record the reasons for the sentence it imposed. *See Carson,* 532 N.W.2d at 757.

III. Ineffective Assistance of Counsel. Daggett next alleges his counsel was ineffective because he allowed him to plead guilty to a charge that lacked a factual basis. He further contends counsel was ineffective in failing to investigate his case and explore possible defenses.

Daggett did not file a motion in arrest of judgment to challenge any alleged infirmities in his plea. He also did not seek to withdraw his plea at sentencing. Normally, this failure means error is not preserved with regard to defects in the plea proceeding. *See State v. Brooks,* 555 N.W.2d 446, 448 (Iowa 1996). Nevertheless, this omission will not bar a challenge to a guilty plea if the failure to file a motion in arrest of judgment resulted from the ineffective assistance of counsel. *Id.*

To succeed with a claim of ineffective assistance of counsel, a claimant must prove two elements. *Id.* First, he must show that counsel failed to perform an essential duty. *Id.* Second, he must prove he was prejudiced by counsel's error. *Id.* We can affirm on appeal if either element is lacking. *Id.* "To show counsel was ineffective in a guilty plea case, the defendant must show that counsel's advice was not within the normal range of competency demanded of attorneys in criminal cases." *State v. Carney,* 584 N.W.2d 907, 910 (Iowa 1998)

(citations omitted). In the context of guilty pleas, a defendant may establish the occurrence of prejudice by showing "there is a reasonable probability that, but for counsel's errors, he or she would not have pleaded guilty and would have insisted on going to trial." *Irving v. State,* 533 N.W.2d 538, 541 (Iowa 1995) (citations omitted).

We review claims of ineffective assistance of counsel de novo. *State v. Allison,* 576 N.W.2d 371, 373 (Iowa 1998). Ordinarily, we preserve ineffectiveness claims raised on direct appeal for postconviction relief to allow full development of the facts surrounding counsel's conduct. *State v. Atley,* 564 N.W.2d 817, 833 (Iowa 1997). However, such claims may be resolved on direct appeal when the record adequately addresses the issues. *State v. Martin,* 587 N.W.2d 606, 609 (Iowa Ct. App. 1998).

With these principles in mind, we address Daggett's claims of ineffective assistance of counsel in turn.

A. Factual Basis for Guilty Plea. Counsel fails to perform an essential duty if counsel allows a defendant to plead guilty to a charge for which no factual basis exists. *State v. Schminkey,* 597 N.W.2d 785, 788 (Iowa 1999). However, where a factual basis exists for the plea, counsel is usually not ineffective for allowing the defendant to plead guilty. *Brooks,* 555 N.W.2d at 448. Therefore, the pivotal issue in this case is whether a factual basis existed for Daggett's plea to the crime of operating a motor vehicle without the owner's consent. *Id.* In determining the existence of such a factual basis, we consider the entire record before the district court. *Id.*

Iowa Code section 714.7 sets forth the elements necessary for conviction of operating a motor vehicle without the owner's consent. It states in pertinent part:

> Any person who shall take possession or control of any . . . self-propelled vehicle . . ., the property of another, without the consent of the owner of such, but without the intent to permanently deprive the owner thereof, shall be guilty of an aggravated misdemeanor.

Iowa Code § 714.7. General criminal intent is an element of section 714.7. *State v. McCormack,* 293 N.W.2d 209, 212 (Iowa 1980). General criminal intent requires only that the defendant intended knowing or deliberate action. *State v. Buchanan,* 549 N.W.2d 291, 294 (Iowa 1996).

We find a factual basis exists for Daggett's charge of operating a motor vehicle without the owner's consent. It is undisputed in the record that Daggett was in possession of Pontiac Bonneville, a self propelled vehicle, and that the Bonneville was the property of Bulman. Daggett contends he had Bulman's permission to take possession of the vehicle. However, the evidence in the record suggests otherwise. The minutes of testimony show Daggett took the vehicle on the pretext that he was going to get the money to pay for it, but failed to return with either the money or the car. When Daggett did not return with the car, Bulman made several unsuccessful attempts to locate him. After several days, Bulman reported the car stolen. The vehicle was recovered only after Daggett was stopped for a traffic offense.

Daggett contends for the first time on appeal that Bulman had given him permission to take the car indefinitely and that Bulman was not concerned about when Daggett paid him the money. Daggett also claims that he tried to pay

Bulman on several occasions. However, there was no evidence before the district court to support any of Daggett's contentions.

Because we find there existed a factual basis for Daggett's charge of operating a motor vehicle without the owner's consent, counsel did not breach an essential duty by allowing him plead guilty to the charge.

B. Failure to Investigate. Part of defense counsel's duties to a client is the duty to investigate. *Schrier v. State*, 347 N.W.2d 657, 662 (Iowa 1984). Daggett contends his trial counsel violated this duty in failing to investigate his case or explore any possible defenses. He claims he did not have adequate time to discuss his case with his attorney because his only contact with his attorney occurred in the courthouse five minutes prior to entering the plea bargain.

We conclude the record before us does not provide a sufficient basis for determining counsel's effectiveness. Therefore, we decline to consider Daggett's claim of ineffective assistance of counsel for failure to investigate on direct appeal.

We affirm Daggett's conviction for operating a motor vehicle without the owner's consent and dismiss on direct appeal his claim that counsel was ineffective in allowing him to plead guilty to a charge for which no factual basis existed. We reserve his ineffective assistance of counsel claim based on failure to investigate for a postconviction relief proceeding, if any is brought.

AFFIRMED.