

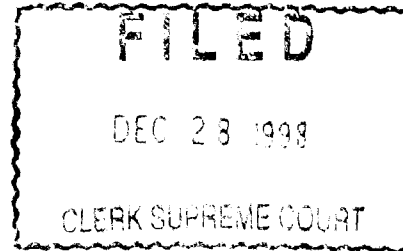
IN THE COURT OF APPEALS OF IOWA

No. 8-557 / 97-1990
Filed December 28, 1998

STATE OF IOWA,
Appellee,

vs.

KENNETH KELLER WHITLER,
Appellant.



Appeal from the Iowa District Court for Iowa County, Thomas M. Horan
(guilty pleas) and Larry J. Conmey (sentencing), Judges.

Defendant appeals his convictions for operating while intoxicated, driving
while license suspended and driving while license revoked. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John P. Messina, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney
General, and Kenneth R. Martens, County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ.

VOGEL, J.

In January 1997, Kenneth Whitler was charged with operating while intoxicated and driving while license suspended. In April 1997, he was charged with driving while license revoked.

On September 25, 1997, Whitler signed written guilty pleas to these charges and waived his rights regarding a criminal trial. The oral plea proceeding was waived, as permitted by Iowa Rule of Criminal Procedure 8(2)(b). *See State v. Yarborough*, 536 N.W.2d 493, 496 (Iowa App. 1995). The district court entered an order approving the written guilty pleas.

Whitler now appeals, claiming the guilty pleas did not establish a factual basis for the offenses at issue. The State agrees Whitler may raise this issue, even though he did not file a motion in arrest of judgment, because the district court failed to advise him of his right to file such a motion.

Our review of alleged defects in a plea proceeding is for correction of errors at law. *State v. Henning*, 299 N.W.2d 909, 910 (Iowa App. 1980).

Rule 8(2)(b) provides a court should not accept a plea of guilty without first determining whether there is a factual basis for the plea. The written guilty pleas provided:

I further state that the State would have sufficient evidence to sustain a conviction should this matter go to trial.

Defense counsel also signed a statement that there was a factual basis for the charges.

Whitler argues these statements are not sufficient to establish a factual basis for the plea. He asserts we cannot assume the court relied on the minutes of testimony to establish a factual basis because there was no specific finding the court had done so.

In determining whether a factual basis for a guilty plea exists, an appellate court may consider the entire record before the district court. *State v. Brooks*, 555 N.W.2d 448, 449 (Iowa 1996). Where there has been a valid waiver of the procedural requirements of rule 8(2)(b), there is no requirement for the court to address a defendant in open court to determine whether the plea was entered voluntarily or whether the plea has a factual basis. *Yarborough*, 536 N.W.2d at 496.

A court is permitted to determine a factual basis by considering sources other than defendant's statements. *State v. Hansen*, 221 N.W.2d 274, 276 (Iowa 1974). The court may consider the minutes of testimony in conjunction with a written guilty plea. *State v. Gonzalez*, 582 N.W.2d 515, 517 (Iowa 1998). Iowa Rule of Criminal Procedure 5(3) requires the State to file minutes of testimony with a trial information. *State v. Bennett*, 503 N.W.2d 42, 46 (Iowa App. 1993). The minutes must contain a full and fair statement of each witness' expected testimony at trial. *State v. Braun*, 495 N.W.2d 735, 740 (Iowa 1993). We consider the minutes of testimony to be part of the district court record, which could be relied upon by the court to determine whether there was a factual basis for Whitler's plea.

In the present case, the minutes of testimony provide ample evidence to provide a factual basis for Whitler's guilty pleas. The minutes of testimony show police officers found Whitler on December 19, 1996, at 2:00 a.m., sleeping behind the wheel of his vehicle, which was in a ditch and had the engine running. A breath test showed Whitler had a blood alcohol level of 0.132. His driver's license had previously been suspended. On March 29, 1997, a police officer saw Whitler driving although his license had been revoked as a result of the December incident.

We affirm Whitler's convictions for operating while intoxicated, driving while license suspended, and driving while license revoked. Costs of this appeal are assessed to Whitler.

AFFIRMED.