

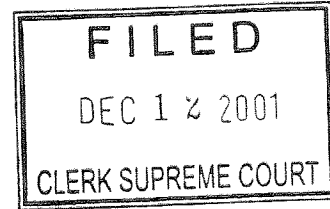
IN THE COURT OF APPEALS OF IOWA

No. 1-813 / 01-0537
Filed December 12, 2001

STATE OF IOWA,
Appellee,

vs.

STEVEN KENT BROOKS,
Appellant.



Appeal from the Iowa District Court for Story County, Timothy J. Finn,
Judge.

Steven Brooks appeals his conviction and sentence for eluding in violation
of Iowa Code section 321.279(3)(b) (Supp. 1999). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Nan Jennisch, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney
General, and Stephen Holmes, County Attorney, for appellee.

Considered by Sackett, P.J., and Mahan and Hecht, JJ.

000588

HECHT, J.

Steven Brooks appeals from his conviction and sentence for eluding in violation of Iowa Code section 321.279(3)(b) (Supp. 1999). He contends his counsel was ineffective in allowing him to plead guilty to a charge for which there was no factual basis and for failing to challenge the plea through a motion in arrest of judgment. We affirm.

I. Factual Background and Proceedings. On the evening of September 29, 2000, a Story County deputy responded to a dispatch regarding a black Chevy Tahoe “tearing up the lawn” at a Nevada, Iowa, home. In route to the residence, the deputy encountered a black vehicle traveling ninety-two miles per hour. The deputy pulled off to the side of the road and activated his red/blue emergency lights, wig-wag headlights, and audio siren; however, the vehicle continued past the patrol car. The deputy turned the patrol car around and began to follow the vehicle. The driver, later identified as Brooks, eventually stopped the vehicle, exited toward the patrol car, and informed the deputy he “was not big enough to handle him.” The deputy attempted a pat down search, but a struggle ensued. Brooks was ultimately restrained and taken into custody, where his blood alcohol tested above the legal limit.

Brooks was charged with five offenses including eluding in violation of Iowa Code section 321.279(3) and operating while intoxicated (OWI), second offense, in violation of section 321J.2. Pursuant to a plea agreement, Brooks entered an *Alford* plea to the eluding charge, a written plea to the OWI charge, and the three remaining charges were dismissed. Brooks then filed a motion in

arrest of judgment, but withdrew the motion prior to sentencing. The district court sentenced Brooks to an indeterminate five-year term of incarceration for the eluding charge and a concurrent two-year term for the OWI charge. Brooks appeals.

II. Standard of Review. We review claims of ineffective assistance of counsel de novo. *State v. Allison*, 576 N.W.2d 371, 373 (Iowa 1998).

III. Discussion. A failure to challenge the adequacy of a guilty plea proceeding by motion in arrest of judgment precludes direct appeal of a conviction. Iowa R. Crim. P. 23(3)(a). However, failure to do so will not preclude a challenge to a guilty plea if it resulted from ineffective assistance of counsel. *State v. Schoelerman*, 315 N.W.2d 67, 71 (Iowa 1982).

Ordinarily, we preserve claims of ineffective assistance of counsel raised on direct appeal for postconviction proceedings to allow full development of the facts surrounding counsel's conduct. *State v. Atley*, 564 N.W.2d 817, 833 (Iowa 1997). However, we will resolve ineffective assistance of counsel claims on direct appeal when the record is adequate to decide the issue. *State v. Arne*, 579 N.W.2d 326, 329 (Iowa 1998).

A defendant receives ineffective assistance of counsel when (1) the defense attorney fails in an essential duty and (2) prejudice results. *State v. Bugely*, 562 N.W.2d 173, 178 (Iowa 1997). In order to meet the first test, one must overcome the strong presumption his attorney's actions were reasonable under the circumstances and fell within the normal range of competency. *State v. Shumpert*, 554 N.W.2d 250, 254 (Iowa 1996). To succeed on the second test,

it must be shown that, but for counsel's error, the result of the proceedings would have been different. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994).

The district court may not accept a guilty plea without first determining that the plea has a factual basis. Iowa R. Crim. P. 8(2)(b); *State v. Burtlow*, 299 N.W.2d 665, 668 (Iowa 1980). Therefore, we will find counsel failed to perform an essential duty if defense counsel allows the defendant to plead guilty to a charge for which no factual basis exists and thereafter fails to file a motion in arrest of judgment challenging the plea. *State v. Brooks*, 555 N.W.2d 446, 448 (Iowa 1996). Prejudice in such a case is inherent. *State v. Schminkey*, 597 N.W.2d 785, 788 (Iowa 1999). In deciding whether a factual basis exists, we consider the entire record before the district court at the guilty plea hearing. *Id.*

Iowa Code section 321.279(3)(b) provides:

The driver of a motor vehicle commits a class "D" felony if the driver willfully fails to bring the motor vehicle to a stop or otherwise eludes or attempts to elude a marked official law enforcement vehicle that is driven by a uniformed peace officer after being given a visual and audible signal as provided in this section, and is doing so exceeds the speed limit by twenty-five miles per hour or more, and . . . [t]he driver is in violation of section 321J.2 . . .

Iowa Code § 321.279(3)(b). Brooks contends his counsel was ineffective in allowing him to plead guilty to the eluding charge, as there was no evidence he willfully failed to stop the vehicle. In particular, Brooks contends the record indicates he stopped his vehicle once the patrol car turned around. Moreover, Brooks argues there is no evidence demonstrating the distance he traveled prior to stopping his vehicle. He further contends his counsel was ineffective in failing to challenge the plea through a motion in arrest of judgment.

Contrary to Brooks's claim, the record discloses a factual basis for his guilty plea. The minutes of testimony allege Brooks failed to slow down from his ninety-two-miles-per-hour pace despite the fact a patrol car was parked along the road, facing oncoming traffic, with his overhead red/blue emergency and wig-wag lights activated. Furthermore, according to the minutes of testimony, Brooks did not stop his car until followed for some distance by the deputy. We find Brooks's contention regarding distance without merit as the plain language of the statute does not reveal any requirement the suspect travel a certain distance or period of time in defiance of a signal from law enforcement to stop. Under these circumstances, counsel breached no essential duty in connection with Brooks's entry of an *Alford* plea to a violation of section 321.279(3) or the withdrawal of his motion in arrest of judgment. See *State v. Rice*, 543 N.W.2d 884, 888 (Iowa 1996) (defense counsel has no duty to make a meritless motion). Accordingly, we affirm the judgment of the district court.

AFFIRMED.