

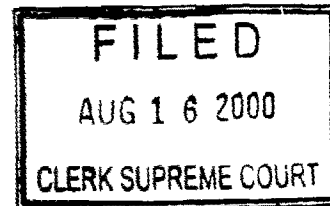
IN THE COURT OF APPEALS OF IOWA

No. 0-418 / 99-1464
Filed August 16, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MELVIN DOUGLAS VEACH,
Defendant-Appellant.



Appeal from the Iowa District Court for Franklin County, Peter B. Newell,
District Associate Judge.

Defendant appeals the judgment and sentence entered following his guilty
plea to possession of a controlled substance. **AFFIRMED.**

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

Thomas - J. Miller, Attorney General, Denise A. Timmins, Assistant
Attorney General, and Brent Symens, County Attorney, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

HUITINK, P.J.

Veach appeals his conviction for possession of a controlled substance, marijuana, claiming he was denied effective assistance of counsel in the entry of a guilty plea. Because the record fails to support Veach's claim there was no factual basis for his plea, we affirm his conviction.

I. Background Facts and Proceedings.

Veach was arrested and charged with possession of a controlled substance after marijuana was found in his pocket during a pat-down search by a police officer. Following arraignment Veach entered a written and oral guilty plea to the offense charged. Veach did not file a motion in arrest of judgment challenging the validity of his plea and was sentenced accordingly.

As noted earlier, Veach contends he was denied effective assistance of counsel. He argues the plea record fails to disclose a factual basis for his plea and his attorney breached an essential duty by allowing him to plead guilty and failing to file a motion in arrest of judgment challenging the plea.

II. Ineffective Assistance of Counsel.

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

this case, 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, 858 (Iowa 1994).

Veach's failure to timely file a motion in arrest of judgment precludes a challenge to the validity of his plea unless failure to file such a motion resulted from ineffective assistance of counsel. *State v. Brooks*, 555 N.W.2d 446, 448 (Iowa 1996). If Veach carries his burden to show plea counsel was ineffective in any particular claim, the plea and resulting judgment entered below must be set aside even in the absence of a timely motion in arrest of judgment asserting these claims. *Id.*

Counsel fails to perform an essential duty if defendant is allowed "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." *Id.* (citation omitted). In the absence of a factual basis, the requisite prejudice is presumed. *State v. Shminkey*, 597 N.W.2d 785, 788 (Iowa 1999). In making this determination, we

consider the entire record before the district court, including the trial information and minutes of testimony. *Brooks*, 555 N.W.2d at 448-49.

Veach's challenge to the factual basis for his plea is premised on the absence of facts indicating he knew the substance found in his pocket was marijuana. Although Veach now denies knowledge the substance found was marijuana, the record contradicts his claim. Veach's written guilty plea acknowledges he "knowingly and intentionally" possessed marijuana. In addition, the minutes of testimony indicate Veach admitted to the arresting officer the substance found was marijuana. We find these facts sufficient to support the knowledge element of the crime of possession of a controlled substance. Counsel had no duty to challenge the validity of the Veach's plea under these circumstances, and we accordingly affirm his conviction.

AFFIRMED.