IN THE COURT OF APPEALS OF IOWA

No. 0-816 / 00-426
Filed February 7, 2001

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RONNIE REGINALD ROGERS,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Walter Rothschild, District Associate Judge.

Defendant appeals from the judgment and sentence entered upon his guilty pleas to driving while license barred and driving while license suspended for nonpayment of child support. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Dennis D. Hendrickson, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven Norby, Assistant County Attorney, for appellee.

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

HUITINK, P.J.

I. Background Facts and Procedure.

Ronnie Rogers pled guilty to the offenses of driving while barred and driving while license suspended for nonpayment of child support in violation of Iowa Code sections 321.218 and 321.561 (1997). The district court sentenced him to ten days in the county jail and imposed a $250 fine. On appeal Rogers contends counsel was ineffective for allowing him to plead guilty to the charge of driving while license is suspended for nonpayment of child support in the absence of a supporting factual basis.

II. Scope of Review.

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 is adequate to decide the issue. *State v. Arne*, 579 N.W.2d 326, 329 (Iowa 1998).

III. Ineffective Assistance of Counsel.

Roger's failure to move in arrest of judgment precludes direct appeal of his 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).

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. *See* 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 321.218(1) provides:

> A person whose driver's license or operating privilege has been denied, cancelled, suspended, or revoked as provided in this chapter or as provided in section 252J.8 [failure to pay child support] or section 901.5, subsection 10, and who operates a motor vehicle upon the highways of this state . . . commits a serious misdemeanor.

Rogers's challenge to his guilty plea is premised on the notion that the reason for the suspension of a driver's license or operating privilege is an

essential element of proof required for a conviction under section 321.218. He argues the absence of any reference to the reason for his suspension in the plea record leaves his guilty plea without a sufficient factual basis.

According to the State, a "proper factual basis for the crime here need not reflect anything about the nature of the prior proceeding leading to suspension for failure to pay child support." Rogers's challenge to his guilty plea is characterized as a prohibited attempt to collaterally attack the administrative proceedings resulting in suspension of his driver's license. *See, e.g., State v. Johnston*, 253 Iowa 674, 676, 113 N.W.2d 309, 311 (1962). Under the State's reading of the statute the "only two elements [of this offense] are (1) driving, (2) while license is under suspension."

Because section 321.218 is a criminal statute it must be narrowly construed. *See State v. Ahitow*, 544 N.W.2d 270, 273 (Iowa 1996). Moreover, a criminal statute should not be construed or interpreted in a way that makes a portion of it irrelevant or redundant. *Id.* If a Code section is unambiguous, it should be applied as written. *See Horsman v. Wahl*, 551 N.W.2d 619, 620-21 (Iowa 1996).

We believe the State misconstrues section 321.218 by ignoring the statute's express reference to the predicate Code sections under which a defendant's driver's license was suspended. Moreover, the State's argument is inconsistent with recent authority holding that the crime committed under section 321.218 "is driving while the license is suspended under a *particular* statute." *State v. Campbell*, 589 N.W.2d 705, 708 (Iowa 1999) (emphasis added). The

court in *Campbell* also noted that "[e]ach violation of a separate Code section [referred to in section 321.218] logically constitutes a separate crime." *Id.* We accordingly hold that the elements of the offense defined in 321.218 include the reason for the underlying suspension.

Contrary to Rogers's claim, the record discloses a factual basis for his guilty plea. The factual basis for the elements of operating on the public highway while Rogers's license was suspended is not disputed. The fact that his license was suspended for failing to pay child support is found in an Iowa Department of Transportation report of Rogers's driving record included in the court file at the time Rogers entered his plea. Under these circumstances, counsel breached no essential duty by permitting Rogers to enter a guilty plea to a violation of section 321.218. *See State v. Rice*, 543 N.W.2d 884, 888 (Iowa 1996) (defense counsel has no duty to make a meritless motion).

The judgment of the district court is affirmed.

AFFIRMED.