

IN THE COURT OF APPEALS OF IOWA

No. 8-363 / 97-1632

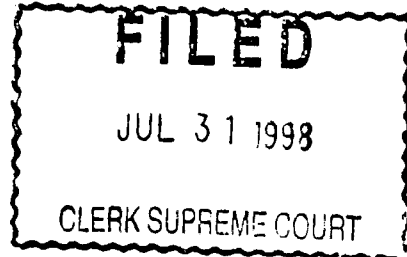
STATE OF IOWA,

Plaintiff-Appellee,

vs.

PATRICK ROBERT SANDFORD,

Defendant-Appellant.



Appeal from the Iowa District Court for Polk County, Donna L. Paulsen,
Judge.

Patrick Sandford appeals from his conviction, following a guilty plea, for
forgery in violation of Iowa Code section 715A.2 (1997). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Christopher A. Cooklin,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney
General, John P. Sarcone, County Attorney, and George Karnas, Assistant County
Attorney, for appellee.

Considered by Cady, C.J., and Streit and Mahan, JJ.

MAHAN, J.

Patrick Sandford appeals convictions on two charges of forgery. He contends the district court erred when it accepted Sandford's guilty plea because the acts he admitted to did not constitute forgery. Therefore, according to Sandford, there was no factual basis for his plea. Sandford also argues if his trial counsel failed to preserve error, the failure deprived him of effective assistance of counsel. We affirm.

Sandford opened an account at Amerus Bank and put money into the account. The account was in the name of Storm Britt. At the plea hearing, Sandford admitted he did not know Storm Britt. He also stated he had identification identifying him as Britt.

On December 3, 1996, Sandford went to Office Max and purchased a desk and chairs. Sandford wrote a check for \$671.96, using a check bearing the name Storm Britt. Sandford admitted he knew he was not Britt and he did not have any authority to sign the name. Sandford hauled the desk home, and when he returned for the chairs the police arrested him.

The State charged Sandford with forgery and he pled guilty.

I. PRESERVATION OF ERROR. The State contends Sandford has not preserved error on the issue of a lack of a factual basis for the plea because he did not file a motion in arrest of judgment. Sandford cites *State v. Burtlow*, 299 N.W.2d 665, 668 (Iowa 1980), and *State v. Sanders*, 309 N.W.2d 144 (Iowa App. 1981), for the

proposition even an express waiver of the right to appeal by failing to challenge a guilty plea by motion in arrest of judgment will not preclude appellate review. However, the very next sentence after the one cited in *Burtlow* plainly states, “The plea proceedings occurred prior to the effective date of Iowa R. Crim P. 8(2)(d) and the amendments to Iowa R. Crim. P. 23(3) which require a guilty plea to be challenged by such a motion before it can be attacked on appeal.” *Burtlow*, 299 N.W.2d at 668. We find it very troubling the case being proffered for the proposition being argued clearly and blatantly rejects the argument. We also find the fact this court reviewed a guilty plea without addressing whether a motion in arrest of judgment was made does not present us with authority to circumvent the rules.

Sandford failed to meet the requirements of the Rules of Criminal Procedure and cannot raise this issue for the first time on appeal.

II. INEFFECTIVE ASSISTANCE OF COUNSEL. Our review of constitutional rights is de novo. *State v. Haviland*, 532 N.W.2d 767, 768 (Iowa 1995). We must look at the totality of the circumstances as shown by the entire record. *State v. Cook*, 530 N.W.2d 728, 731 (Iowa 1995).

The defendant bears the burden of demonstrating ineffective assistance of counsel. *State v. Morgan*, 559 N.W.2d 603, 612 (Iowa 1997); *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994); *State v. Kone*, 557 N.W.2d 97, 102 (Iowa App. 1996). “A defendant receives ineffective assistance of counsel when (1) the defense attorney

fails in an essential duty and (2) prejudice results.” *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); *State v. Bugely*, 562 N.W.2d 173, 178 (Iowa 1997). We can affirm on appeal if either element is lacking. *State v. Brooks*, 555 N.W.2d 446, 448 (Iowa 1996).

Generally, claims of ineffective assistance of counsel are preserved for postconviction proceedings so that a more complete record may be developed on various issues. *State v. Baker*, 560 N.W.2d 10, 15 (Iowa 1997). “However, they may be resolved on direct appeal when the record adequately addresses the issues.” *Kone*, 557 N.W.2d at 102.

Sandford contends his counsel was ineffective by allowing him to plead guilty to, and in allowing the trial court to enter judgment on, a charge for which no factual basis could be established.

A person is guilty of forgery if, with intent to defraud or injure anyone . . . the person . . . [m]akes, completes, executes, authenticates, issues, or transfers a writing so that it purports to be that act of another who did not authorize that act

Iowa Code § 715A.2(1)(b) (1995).

Sandford admits he had an intent to defraud. However, he argues using an alias is not forgery because he has not made a document that purports to have been made by another. We need not decide this issue because we find Sandford was not using the name Storm Britt as an alias.

When the trial court asked Sandford who Storm Britt was, Sandford replied he did not know, he had never met the man. Sandford also admitted he knew he was not Storm Britt and he did not have any authority to sign that name. If Britt was Sandford's alias, he surely would have told the trial court he was Britt. Thus, Sandford's basis for challenging the plea must fail, and the trial court correctly determined there was a factual basis for Sandford's plea. Because there was a factual basis for the guilty plea, Sandford's claim of ineffective assistance is without merit.

Sandford's brief states it is an appeal of two forgery convictions. However, he has only argued the incident discussed above. "Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue. Iowa R. App. P. 14(a)(3); *Genetzky v. Iowa State Univ.*, 480 N.W.2d 858, 861 (Iowa 1992). For this reason, we find Sandford has waived any argument regarding the stolen check from Henning Construction.

We affirm both convictions.

AFFIRMED.