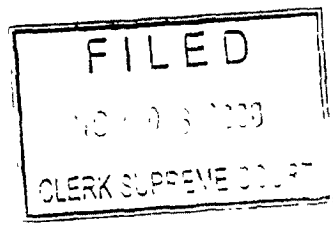
IN THE COURT OF APPEALS OF IOWA

No. 0-645 / 00-0201
Filed November 8, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROGER B. ENNENGA,
Defendant-Appellant.



Appeal from the Iowa District Court for Warren County, Gary G. Kimes and Darrell Goodhue, Judges.

Roger Bernell Ennenga appeals the district court's judgment and sentence, entered upon his guilty plea to forgery in violation of Iowa Code sections 715A.2(1)(b) and 715A.2(2)(a)(1) (1999). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K Hall, Assistant Attorney General, Kevin Parker, County Attorney, and Patricia L. Notch, Assistant County Attorney, for appellee.

Considered by Zimmer, P.J., and Hecht and Vaitheswaran, JJ.

VAITHESWARAN, J.

Robert Bernell Ennenga wrote and cashed a check on the account of a deceased doctor. He pled guilty to forgery in violation of Iowa Code sections 715A.2(1)(b) and 715A.2(2)(a)(1) (1999) and was sentenced to an indeterminate prison term not to exceed five years. On appeal, Ennenga contends his attorney was ineffective in failing to challenge the factual basis for his plea. We disagree and affirm.

I. Preservation of Error

As a preliminary matter, the State asserts Ennenga waived error by failing to challenge the factual basis for his plea via a motion in arrest of judgment. The State concedes an ineffective assistance of counsel claim may serve as an exception to the general requirement of error preservation. *See State v. Miller*, 590 N.W.2d 724, 725 (Iowa 1999). However, the State maintains Ennenga may not avail himself of this exception because his ineffective assistance claim has no merit. As consideration of this error preservation argument would require us to reach the merits, we elect to bypass the argument and proceed directly to the merits.

II. Ineffective Assistance of Counsel

We review Ennenga's ineffective assistance of counsel claim de novo. *State v. Brooks*, 555 N.W.2d 446, 448 (Iowa 1996). To succeed, Ennenga must prove (1) his counsel failed to perform an essential duty; and (2) prejudice resulted. *State v. Carter*, 582 N.W.2d 164, 165 (Iowa 1998). We will find counsel breached 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." *Brooks*, 555 N.W.2d at 448. We must therefore determine whether a factual basis exists for Ennenga's plea. In making that determination, we will consider the entire record before the district court. *Id.*

Iowa Code section 715A.2(1)(b) states:

> A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that the person is facilitating a fraud or injury to be perpetrated by anyone, the person does any of the following:
> *b.* Makes, completes, executes, authenticates, issues, or transfers a writing so that it purports to be the act of another who did not authorize that act...

Ennenga contends his plea lacked a factual basis because the doctor whose check he was charged with forging was dead, rendering it impossible for the State to call the doctor as a witness. We find no merit to this contention. According to the minutes of testimony, the State expected to call a witness who would testify Ennenga cashed a check on the doctor's account. A police officer's certification reveals the handwriting on the check matched Ennenga's. At the plea proceedings, Ennenga admitted he wrote a check on the dead physician's account, then went to a grocery store and cashed it. He further admitted he signed someone else's name without a right to do so. We conclude Ennenga's guilty plea to forgery was supported by a factual basis. Accordingly, we further conclude Ennenga's attorney breached no essential duty and, therefore, did not provide ineffective assistance by allowing him to plead guilty and by failing to file a motion in arrest of judgment. Ennenga's conviction is affirmed.

AFFIRMED.