IN THE COURT OF APPEALS OF IOWA

No. 6-766 / 95-1858

000463

FILED
JAN 29 1997
CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

ROBERT FRANK PLOWMAN,

Appellant.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker, Judge.

Robert Plowman appeals from his conviction, following a guilty plea, for second-degree theft. **AFFIRMED.**

Kermit L. Dunahoo and Jon C. Tack of Dunahoo Law Firm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, James DeTaeye, County Attorney, and Paul G. Crawford, Assistant County Attorney, for appellee.

Considered by Habhab, C.J., Huitink, and Vogel, JJ.

PER CURIAM

This is an appeal by a defendant challenging his conviction, after a guilty plea, for the crime of theft in the second degree, in violation of Iowa Code sections 714.1(1) and 714.2(2). We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Robert Plowman was charged with theft in the second degree due to allegations he stole a pickup truck in Marshalltown. According to the minutes of testimony, the pickup was recovered from the parking lot of a Casey's Store in Grand Junction, Iowa. Plowman pled guilty to the crime charged. The district court sentenced him to a term of imprisonment not to exceed five years. This sentence was suspended.

Plowman challenges his guilty plea. He claims he failed to file a motion in arrest of judgment because he received ineffective assistance of trial counsel. He states his motion in arrest of judgment would have been successful because there was an insufficient factual basis in the record to support his guilty plea. In particular, he states there was no evidence he intended to permanently deprive the owner of the pickup truck.

We conclude Plowman has failed to show he received ineffective assistance of counsel due to failure to file a motion in arrest of judgment. We do not believe such a motion would have been successful. To convict a defendant of theft, the State must show the defendant took possession or control of property with intent to deprive

another of the property. *State v. Hershberger*, 534 N.W.2d 464, 465 (Iowa App. 1995). In *State v. Berger*, 438 N.W.2d 29 (Iowa App. 1989), we rejected a similar argument that theft requires a permanent deprivation. *Id.* at 30. We held that intent to deprive, as used in section 714.1(1), requires more than a temporary dispossessing of another's property, although a deprivation is not required to be permanent. *Id.* at 31.

When asked whether he took the pickup with the specific intent to deprive the owner of the vehicle, Plowman responded:

> I intended it for my own purposes, but I didn't mean to hurt anybody or viciously attempt to deprive him of it, you know.

We conclude there was sufficient evidence Plowman had the specific intent to deprive the owner of the pickup truck.

We affirm Plowman's conviction for theft in the second degree. Costs of this appeal are assessed to Plowman.

AFFIRMED.