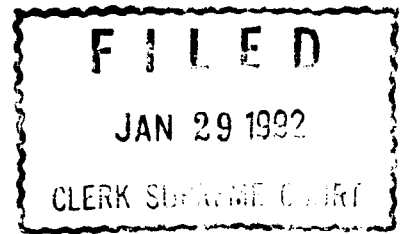


IN THE COURT OF APPEALS OF IOWA

No. 1-531 / 91-366



STATE OF IOWA,

Appellee,

857

vs.

CARLOS BENARD THOMPSON,

Appellant.

Appeal from the Iowa District Court for Des Moines
County, John C. Miller, Judge.

Defendant appeals his guilty plea conviction of assault
causing bodily injury. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, for
appellant.

Bonnie J. Campbell, Attorney General; Martha E. Boesen,
Assistant Attorney General; Patrick C. Jackson, County
Attorney, and Ronald E. Robertson, Assistant County
Attorney, for appellee.

Considered by Oxberger, C.J., and Schlegel and Sackett,
JJ.

SCHLEGEL, J.

Carlos Bernard Thompson appeals his conviction, by guilty plea, to the charge of assault causing bodily injury as defined in section Iowa Code section 708.2. He claims his counsel rendered ineffective assistance in permitting him to plead guilty when (1) there was no factual basis for the plea, (2) the district court did not discuss his constitutional rights with him, and (3) the court did not advise him of the mandatory minimum and maximum punishments for the offense, all in violation of Iowa Rule of Criminal Procedure 8(2)(b).

Thompson entered a plea of guilty to the charge of assault causing bodily injury, a serious misdemeanor. The court determined the plea was the result of a plea bargain and determined the details of that agreement. The court then asked defendant's counsel if he had advised the defendant of all his constitutional rights. Assured that he had done so, the court next asked the county attorney to provide a factual basis briefly summarizing the evidence. The county attorney did. The court went on to explain to the defendant what the State would be required to prove in order to convict him of the crime and asked defendant if those were the things he did. The defendant answered in the affirmative. The court did not discuss the mandatory minimum, if any, nor the maximum punishment for the crime.

After accepting the plea, defendant's counsel advised the court his client was willing to be sentenced

immediately. After determining from the defendant that was his wish, the court proceeded to pronounce sentence. The court advised the defendant his immediate sentencing would preclude him from attacking the validity of his plea of guilty by way of a motion in arrest of judgment. Defendant acknowledged he understood this and stated he wished to proceed to sentencing immediately. The court sentenced him to one year to be served concurrently with the sentence he would be required to serve due to the revocation of his probation; that revocation would require him to serve not more than two years in the custody of the department of corrections.

In this case defendant raises a claim of ineffective assistance of counsel which implicates constitutional rights under the sixth and fourteenth amendments. Our review under such circumstances is de novo. State v. Lamp, 322 N.W.2d 48, 50 (Iowa 1982). While ordinarily ineffective assistance claims are not adjudicated on direct appeal, we may dispose of claims of questionable merit on direct appeal. We believe this to be such a case.

Our ultimate concern is with "the fundamental fairness of the proceeding whose result is being challenged." State v. Risdal, 404 N.W.2d 130, 131 (Iowa 1987) (quoting Strickland v. Washington, 466 U.S. 688, 696, 104 S. Ct. 2052, 2069, 80 L. Ed. 2d 674, 699 (1984)). To establish a claim of ineffective assistance, defendant must prove by a preponderance of the evidence that "(1) counsel failed to

perform an essential duty and (2) prejudice resulted." Id. at 131-32 (citing State v. Kraus, 397 N.W.2d 671, 673 (Iowa 1987)).

Defendant claims his attorney was ineffective because he permitted him to plead guilty when there was no factual basis for that crime. He claims since the court did not ask him to give the factual basis, none existed. We disagree. In examining the record, we find the court did establish a factual basis for the plea. The mere fact the court did not ask defendant to state the facts constituting the crime does not mean a factual basis did not exist. In fact, the court satisfied itself that the defendant had committed the elements of the crime in a direct dialogue with the defendant. Since there was a factual basis for the plea, counsel did not fail to perform an essential duty.

Defendant must also prove prejudice resulted from the failure of counsel to perform an essential duty. He must prove there is a reasonable probability that but for the failure of counsel, the result would have been different. Thompson has failed to show that had counsel called to the court's attention the supposed failure to insist upon the showing of a factual basis, his plea would have been different. Defendant has failed to demonstrate prejudice from any claimed failure of trial counsel.

Thompson also claims counsel was deficient in allowing him to plead guilty when no written plea detailing

defendant's understanding of and waiver of his rights was filed in this case. This claim is also without merit. No such written waiver is necessary. We find the court satisfied itself that the plea was knowing and voluntary, and that defendant understood the elements of the offense and the consequences of his plea. This is the requirement of Iowa Rule of Criminal Procedure 8(2)(b). We also note the plea in this case was to a serious misdemeanor and the last provision of rule 8(2)(b) states: "[t]he court may, in its discretion and with the approval of the defendant, waive the above procedures in a plea of guilty to a serious misdemeanor."

Considering the totality of the circumstances of this record, we hold the defendant has failed to show he was denied effective assistance of counsel in connection with his guilty plea. Accordingly, we affirm his conviction.

AFFIRMED.