

IN THE COURT OF APPEALS OF IOWA

No. 3-803 / 12-2281
Filed September 18, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

QUINTIN SENTEL HOWARD,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark D. Cleve (guilty plea) and Paul L. Macek (sentencing), Judges.

Quintin Howard appeals his conviction for assault causing bodily injury.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Rachel C. Regenold, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Tyler J. Buller, Assistant Attorney General, Mathias Robinson, Student Legal Intern, Michael J. Walton, County Attorney, and Khara Washington and Kimberly Shepherd, Assistant County Attorneys, for appellee.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

VOGEL, P.J.

Quintin Howard appeals his conviction for assault causing bodily injury, claiming trial counsel was ineffective in failing to file a motion in arrest of judgment challenging the factual basis for his plea. He further claims the district court abused its discretion when it insisted he address the court prior to sentencing. Because the record supports the factual basis of the plea, and we disagree Howard was forced to allocute, we affirm.

Quentin Howard pleaded guilty to the charges of assault causing bodily injury and criminal mischief in the second degree.¹ According to the minutes of testimony, which incorporated the police report, Howard was at the motorcycle club Thunderguard on January 8, 2012. Tyesha Allen had her car outside the club, and was there with Derrick Levy. After arguing with Levy, Howard drove toward Levy, who stated Howard tried to hit him several times, and at one point ran over his foot.² Levy did not sustain any visible injury and refused medical treatment. Howard also struck Allen's car with his own vehicle, and her car sustained significant damage.

¹ Count III of the amended trial information charges Howard with "an assault as defined in Section 708.1 of the Code of Iowa upon the person of Derek Levy said act not intended to cause serious injury but causes bodily injury, in violation of Section 708.2(2) of the Code of Iowa." The plea agreement does not cite a code section, and lists "assault resulting in bodily injury, a serious misdemeanor" as the crime to which Howard pleaded guilty. The court calendar states: "Defendant enters . . . a written plea of guilty to Count 3, Assault Resulting in Bodily Injury, in violation of Iowa Code Section 708.2(2)." While there are inconsistencies with respect to the code section and definition of the crime used in the various court documents, we are proceeding under the premise Howard was charged with, and pleaded guilty to, the crime of assault causing bodily injury pursuant to Iowa Code section 708.2(2) (2011), with assault being defined in Iowa Code section 708.1(2).

² Within the minutes of testimony, there is some confusion as to whether Howard ran over Levy's foot with his own vehicle or hit Allen's vehicle, which caused Allen's car to then run over Levy's foot.

With respect to the assault charge, the plea agreement stated: “[O]n or about January 8, 2012, in Scott County, Iowa, I was driving an automobile which made contact with a person who sustained bodily injury. I intentionally drove the car toward the individual.”

Howard now claims trial counsel was ineffective in failing to file a motion in arrest of judgment, because the plea agreement did not establish Howard “caused” Levy’s injury, which is required for the crime of assault causing bodily injury pursuant to Iowa Code section 708.2(2). Considering the plea states a person sustained a bodily injury as opposed to Howard intended to, and in fact caused, bodily injury, he maintains there was no factual basis to support this charge. Howard relies on *State v. Schuler*, 774 N.W.2d 294, 298 (Iowa 2009), which held the words “sustain” and “cause” legally and substantively differ. Thus, he maintains counsel was ineffective for failing to file a motion in arrest of judgment challenging the factual basis of the plea.

A claim asserting counsel was ineffective for failing to establish a factual basis for the plea is the exception to the general rule a defendant is precluded from challenging a guilty plea, unless he files a motion in arrest of judgment. *State v. Allen*, 708 N.W.2d 361, 368 (Iowa 2006). We review ineffective assistance of counsel claims de novo. *State v. Tejeda*, 677 N.W.2d 744, 754 (Iowa 2004). While we generally reserve ineffective assistance claims for postconviction relief proceedings, if the record is adequate to address the claim, it may be resolved on direct appeal. *Id.* We find the record is adequate here.

To succeed on his ineffective assistance claim, Howard must show (1) trial counsel breached an essential duty, and (2) prejudice resulted. See *id.* If

counsel allows the defendant to plead guilty to an offense for which there is no factual basis and fails to file a motion in arrest of judgment, counsel has breached an essential duty. *State v. Philo*, 697 N.W.2d 481, 485 (Iowa 2005). Additionally, both prongs must be established. *Id.* Therefore, if Howard cannot show he was prejudiced, we need not consider whether trial counsel failed to perform an essential duty. See *Tejeda*, 677 N.W.2d at 754. We note that “prejudice must give rise to a reasonable probability the outcome of the proceeding would have been different had counsel not erred.” *Id.* (internal citation omitted).

To determine whether an adequate factual basis exists to support a guilty plea, the entire record may be examined. *State v. Finney*, 834 N.W.2d 46, 62 (Iowa 2013) (“On a claim that a plea bargain is invalid because of a lack of accuracy on the factual-basis issue, the entire record before the district court may be examined.”). We may consider the minutes of testimony, rather than simply the signed plea agreement, in determining whether enough facts exist to sustain the guilty plea for assault causing bodily injury.

To be guilty of this crime, the defendant must commit an act intended to cause pain or injury resulting in physical contact that was either insulting or offensive, or commit an act “intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.” Iowa Code § 708.1(1), (2). If the defendant causes bodily injury or mental illness, the crime is considered a serious misdemeanor. *Id.* § 708.2(2). This is a crime that includes an element of

specific intent, that is, the defendant must intend to cause harm. *State v. Fountain*, 786 N.W.2d 260, 265 (Iowa 2010).

Here, the minutes of testimony establish an adequate factual basis. Howard attempted to hit Levy with his own vehicle multiple times, and in fact caused Levy physical harm when he ran over Levy's foot.³ See *State v. Marti*, 290 N.W.2d 570, 585 (Iowa 1980) (holding the element of causation is satisfied when, "but for the defendant's conduct, the harm or damage would not have occurred."). Furthermore, it is well established a person ordinarily intends the natural and probable consequences resulting from his voluntary actions. See *State v. Bedard*, 668 N.W.2d 598, 601 (Iowa 2003). This record, including the minutes of testimony and the plea agreement, supports the elements required to sustain a charge of assault causing bodily injury—Howard intended to cause, and did cause, physical harm to another. The plea agreement signed by Howard stating Levy "sustained" an injury does not negate Howard's actions that show he intended to, and did in fact cause, Levy's injury, as set forth in the minutes of testimony. Additionally, his statement "I intentionally drove the car toward the individual" supports the element of specific intent. Therefore, an adequate factual basis existed to support Howard's guilty plea, and counsel did not breach an essential duty by failing to file a motion in arrest of judgment.

We next consider Howard's second argument, that the court pressured him to allocute during sentencing. We review sentencing procedures for an

³ The factual discrepancy within the minutes of testimony as to whether Howard ran over Levy's foot with his own car or hit Allen's car, which then caused her car to run over Levy's foot, does not make a difference with respect to the legal element of causation, as which car actually ran over Levy's foot does not affect the issue of whether or not Howard's actions caused Levy's injury.

abuse of discretion, which only occurs if the district court's discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Duckworth*, 597 N.W.2d 799, 800 (Iowa 1999).

During sentencing, the following exchange occurred:

The Court: Mr. Howard, now is your opportunity to tell me anything that you think I should know before I pass judgment and sentence.

Howard: I don't have nothing to say.

The Court: Nothing at all?

Howard: (Shook head.)

....

The Court: Mr. Howard, I really would like to hear, if you do have anything to say, I'd like to hear it. But if you don't, you don't. I can accept that and go forward.

Howard: I don't think I should be sent to prison on this charge. I think I can do the probation.

The Court: All right. Anything else?

Howard: No.

With the district court's unequivocal declaration Howard was under no obligation to make a statement, we do not find the court forced Howard to speak such that he was deprived of his right to waive allocution. *See generally State v. Lumadue*, 622 N.W.2d 302, 304 (Iowa 2001) (the defendant must be given the opportunity to speak but cannot be forced to do so).

Without actually raising an issue as to the court's sentencing discretion, Howard asserts "the district court's sentencing decision in this case demonstrates a blatant disregard of Howard's waiver of allocution and suggests vindictiveness." During sentencing, the court stated:

Mr. Howard, if you had expressed some remorse for these events, I would have entertained having these sentences served concurrently. You didn't express any remorse at all. You didn't suggest to me that you were accepting responsibility. Because of your criminal history and the nature of these crimes, and the lack of remorse, these sentences will run consecutively.

Finding no improper sentencing factors utilized by the court, we affirm both Howard's conviction and sentence. See *State v. Knight*, 701 N.W.2d 83, 88 (Iowa 2005) (“[A] sentencing court may properly consider [the defendant’s lack of remorse], as evidenced by facts other than the defendant’s not-guilty plea, in making a sentencing decision.”)

AFFIRMED.