

IN THE COURT OF APPEALS OF IOWA

No. 3-820 / 12-0553
Filed October 2, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTINE ANN DIGGINS,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Bradley J. Harris (guilty plea) and Jon C. Fister (sentencing), Judges.

Defendant appeals following her guilty plea to possession of a controlled substance (methamphetamine), third offense. **AFFIRMED.**

Patrick Ingram of Mears Law Office, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad P. Walz, Assistant County Attorney, for appellee.

Considered by Danilson, P.J., Tabor, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

HUITINK, S.J.**I. Background Facts & Proceedings.**

Christine Diggins was charged by trial information with possession of a controlled substance (methamphetamine), third offense, in violation of Iowa Code section 124.401(5) (2009). A copy of the minutes of evidence and police reports by Officers Joseph Zubak and Andres Naumann of the Waterloo Police Department were attached to the trial information. The State later filed additional minutes of evidence, which included a police report by Investigator Nicholas Berry of the Tri-County Drug Enforcement Task Force.¹

The following exchange occurred during plea proceedings:

THE COURT: Were you here in Black Hawk County on August 11th of this year—or, of last year?

DEFENDANT: Yes.

THE COURT: And at that time, did you have methamphetamine in your possession?

DEFENDANT: Yeah.

THE COURT: Okay. It was—

DEFENSE COUNSEL: It's a constructive possession case, your honor.

DEFENDANT: When it was discovered, yes.

THE COURT: And do you admit that you had the two prior convictions for the drug cases?

DEFENDANT: Yes.

THE COURT: Can the court rely on the minutes, [prosecutor]?

PROSECUTOR: Yes, your honor.

THE COURT: Any further factual basis requested?

PROSECUTOR: No, your Honor.

THE COURT: Can the court rely on the minutes, [defense counsel]?

DEFENSE COUNSEL: Yes, Your Honor.

THE COURT: Any further factual basis requested?

DEFENSE COUNSEL: No, Your Honor.

¹ The district court granted the State's motion to amend the minutes of evidence.

Diggins entered a guilty plea to the charge of possession of a controlled substance, third offense. She was sentenced to a term of imprisonment not to exceed five years. Diggins now appeals, claiming she received ineffective assistance because defense counsel permitted her to plead guilty when there was an insufficient factual basis for the plea.

II. Standard of Review.

We review claims of ineffective assistance of counsel de novo. *Ennenga v. State*, 812 N.W.2d 696, 701 (Iowa 2012). To establish a claim of ineffective assistance of counsel, an applicant must show (1) the attorney failed to perform an essential duty and (2) prejudice resulted to the extent it denied applicant a fair trial. *State v. Carroll*, 767 N.W.2d 638, 641 (Iowa 2008). “In determining whether an attorney failed in performance of an essential duty, we avoid second-guessing reasonable trial strategy.” *Everett v. State*, 789 N.W.2d 151, 158 (Iowa 2010). In order to show prejudice, a defendant must show that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. *State v. Madsen*, 813 N.W.2d 714, 727 (Iowa 2012).

III. Ineffective Assistance.

Diggins claims there is an insufficient factual basis in the record to show she had constructive possession of the methamphetamine found in her vehicle. In order to establish constructive possession, the State must show Diggins had knowledge of a controlled substance as well as the authority or right to control it. *State v. DeWitt*, 811 N.W.2d 460, 474 (Iowa 2012). She contends she received ineffective assistance because her defense counsel permitted her to plead guilty

despite the lack of evidence to show she had constructive possession of the methamphetamine.

“It is a responsibility of defense counsel to ensure that a client does not plead guilty to a charge for which there is no objective factual basis.” *State v. Finney*, 832 N.W.2d 46, 54 (Iowa 2013). “Where counsel falls short, a Sixth Amendment violation is present.” *Id.* at 55. In determining whether there is a factual basis in the record to support a defendant’s guilty plea, we make an objective inquiry. *Id.* “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.” *Id.* at 62. This includes a consideration of the minutes of evidence. *Id.*

In determining whether there is sufficient evidence of constructive possession of a controlled substance, a court may consider incriminating statements made by the accused. *State v. Carter*, 696 N.W.2d 31, 39 (Iowa 2005). When a case involves items in a motor vehicle, a court may also consider whether the controlled substance was with the accused’s personal effects. *Id.* There needs to be only sufficient factual evidence to support the crime, not necessarily to show the defendant is guilty. *State v. Keene*, 630 N.W.2d 579, 581 (Iowa 2001).

The minutes of evidence in this case provide a sufficient factual basis to support Diggins’s guilty plea to the charge of possession of a controlled substance. The minutes refer to Officer Naumann’s police report stating he found the methamphetamine in a white cloth bag on the passenger seat in the vehicle Diggins was driving. Also, the minutes refer to Officer Zubak’s report

stating Diggins told him the other items inside the bag, "showering stuff," belonged to her. Furthermore, the amended minutes refer to Investigator Berry's report stating Diggins told him she was involved in selling methamphetamine and had been obtaining large quantities of the drug.

We conclude Diggins has not shown she received ineffective assistance because defense counsel permitted her to plead guilty to possession of a controlled substance despite the lack of a factual basis in the record. To the contrary, we conclude there was a factual basis to support the guilty plea. We affirm her conviction for possession of a controlled substance, third offense.

AFFIRMED.