IN THE COURT OF APPEALS OF IOWA

No. 3-966 / 12-2113
Filed November 20, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JUSTIN ROBERT JENTZ,
Defendant-Appellant.

Appeal from the Iowa District Court for Dubuque County, Randal J. Nigg, Judge.

Justin Jentz appeals the district court's denial of his motion to withdraw his guilty pleas to the charges of operating a motor vehicle while barred, operating while revoked, and driving while suspended. **AFFIRMED.**

Gina L. Kramer of Reynolds & Kenline, L.L.P., Dubuque, for appellant.

Thomas J. Miller, Attorney General, and Mary Triick and Kevin Cmelik, Assistant Attorney General, Ralph Potter, County Attorney, Mark Hostager, Assistant County Attorney, for appellee.

Heard by Vogel, P.J., and Potterfield and McDonald, JJ.

VOGEL, P.J.

Justin Jentz appeals the district court's denial of his motion to withdraw his guilty pleas to the charges of operating a motor vehicle while barred, operating while revoked, and driving while suspended. The court did not abuse its discretion in denying Jentz's motion, considering his pleas were both voluntarily and intelligently made, with Jentz only showing signs of remorse after the district court announced its sentencing decision. Jentz also argues trial counsel was ineffective for failing to file a motion to dismiss based on speedy trial grounds. Because the delays were primarily due to Jentz's own actions, a motion to dismiss based on speedy trial grounds would not have succeeded, and thus no prejudice can be established. Therefore, we affirm.

I. Factual and Procedural Background

On June 5, 2011, a Dubuque County officer stopped a vehicle driven by Jentz after noticing a beer can perched on the front dash. Upon running his license, the officer determined Jentz was barred from driving and arrested him. Three charges arose from the incident. Operating while barred under Iowa Code section 321.561 (2011), an aggravated misdemeanor, and operating while revoked under Iowa Code section 321J.21, a serious misdemeanor, were brought under one case number. An operating while suspended count under Iowa Code section 321.218, a simple misdemeanor, was charged in a separate complaint.

Jentz was arraigned on June 14, 2011 for the indictable offenses. After several continuances, Jentz's absence from the state for six months, and six different trial dates, Jentz entered an *Alford* plea to all three charges on October

31, 2012. Once the court announced its sentencing decision, Jentz expressed some confusion about the proceedings, then stated: "I would like to withdraw my plea and go to trial and let a jury decide then. I wasn't even doing anything and before judgment [is] out I would like to withdraw my plea." The court denied the motion and issued a written order explaining its reasoning. Jentz now appeals, claiming the court abused its discretion in denying his motion and that counsel was ineffective for failing to file a motion to dismiss based on speedy trial grounds.

II. Motion to Withdraw Plea

Jentz claims the district court should have granted his motion to withdraw the plea because his motion was equivalent to a motion in arrest of judgment, and his plea was not voluntary and intelligent, as required by due process. We first note a motion to withdraw a guilty plea under Iowa Rule of Criminal Procedure 2.8(2)(a), which is within the court's discretion to grant or deny, is not equivalent to a motion in arrest of judgment under rule 2.24(3)(a), which asserts a deficiency in the plea proceedings. Jentz clearly sought to withdraw his plea.

Moving to the merits of his claim, Jentz asserts the language of the written plea stated "I wish to submit to a finding of guilty" rather than that he was "pleading guilty," as well as his expressed confusion about the nature of the plea proceeding after the court announced its sentence. He relies on *State v. Sayre*, 566 N.W.2d 193, 196 (Iowa 1997), in which our supreme court reversed the district court's denial of the defendant's motion to withdraw his guilty plea because the record was unclear whether the defendant actually pled guilty or was found guilty after stipulating to the minutes of testimony.

We review the grant or denial of a motion to withdraw a guilty plea for an abuse of discretion. *State v. Speed*, 573 N.W.2d 594, 596 (Iowa 1998). The court abuses its discretion only when it is exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Id.* "The refusal to allow withdrawal will be upheld where a defendant, with full knowledge of the charge against him and of his rights and the consequences of a plea of guilty, enters such a plea understandably and without fear or persuasion." *Id.* (internal citations omitted). To the extent Jentz is raising constitutional issues, we review those claims de novo. *See State v. Oldham*, 515 N.W.2d 44, 46 (Iowa 1994).

Here, before the court accepted Jentz's guilty pleas, it reviewed Jentz's written plea, confirming Jentz would plead to each charge under the parameters of *North Carolina v. Alford*, 400 U.S. 25 (1970).[1] To be sure, it interrupted defense counsel with:

> The Court: Just a second, I'm going to stop you there, because the Supreme Court is very ticklish about the difference between submitting to a finding and pleading guilty, even under *Alford*. I don't want to get caught in that, the difference there, because we don't have a stipulated record . . . so he is not submitting to a finding, he's pleading guilty but just doing it under *Alford*; is that right?
>
> Defense Counsel: Yes, he is. I apologize. That was my misspeaking. He's pleading guilty under *Alford.* I will note, though . . . that that guilty plea does mention submitting to a finding . . . . [P]aragraph four, for example, so maybe we need to amend that . . . . Those are mistakes on my part.
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> . . . .
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> Defense Counsel: I would make a motion to amend that guilty plea and indicate that at any place we indicated that we're submitting to a finding of guilt in that we would amend that we are pleading guilty under *Alford*.

[1] We note that "[a]n *Alford* plea is a variation of a guilty plea. In effect, the pleas are the same as the defendant is agreeing to the imposition of a criminal sentence for the crime charged." *State v. Burgess*, 639 N.W.2d 564, 567 (Iowa 2001).

When asked if Jentz was "okay with . . . [defense counsel's] statement that we're going to amend your written guilty plea," Jentz stated: "Yes, I am."

The court then turned to Jentz and explained in common terms the difference between pleading guilty under *Alford* and submitting to a finding of guilt. Jentz acknowledged his understanding of the nature of the plea and stated:

> I'm pleading guilty to the offenses mainly because I didn't want to go to trial on this. The State refuses to give me any kind of plea offer. I leave it in your hands to decide my fate. As you know, I have—I've been to trial on six different cases. I've been found not guilty on four of six of those, or directed verdicts.
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> . . . .
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> I was offered a year to begin with, but I didn't want to plead guilty to some things that I didn't do, so there is kind of a grudge, I feel, against the State. I'm just asking for concurrence on the five-year sentence I already have, and for that reason I'm pleading guilty. I didn't want to take it to trial because I didn't want to waste the State's time or money on something that I felt I could be found guilty on. For that reason I pled guilty and left it in your hands to decide my fate today.

Though not every occurrence in which the written plea indicated Jentz was submitting to a finding of guilt was removed, this is not enough to render the plea inadequate or flawed. The court and defense counsel were specific on what legal standard was being employed, and Jentz stated he understood and accepted the amendment to the plea. The record is clear Jentz understood that he was pleading guilty, rather than agreeing to a trial on the stipulated minutes. *See Sayre*, 566 N.W.2d at 196.

Next, after inquiring into various aspects of the presentence investigation report, the court announced its decision to impose the maximum amount of incarceration on each count, to run concurrently with each other, but

consecutively to a sentence imposed in another other case. In addressing Jentz, the court stated:

> I just don't know what to do in situations with defendants that seem to be as incorrigible as you are . . . . I can't see that it's appropriate not to sentence you consecutively to another crime. I just think that's appropriate, again, primarily because of the criminal record you have and the fact that there should be consequences.[2]

With the sentence detailed, and after being informed of his right to appeal, Jentz expressed confusion inquiring whether, in an *Alford* plea, he was "allowed to tell [the court his] side of the story . . . ." The court readily allowed Jentz to speak, saying it was his "right of allocution and it's your time to tell me what you think your sentence should be." Jentz then explained what happened the day of the arrest, after which the court stated "that as far as the Court is concerned, you were driving, okay? That's what you pled guilty to." The following exchange then occurred:

> The Court: Did you think that if you came in here and pled guilty that somehow I was going to find you not guilty?
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> Jentz: I don't know. With hearing my side of the story you might have.
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> The Court: Doesn't work that way . . . . You give up your right to tell your side of the story so to speak when you plead guilty as far as whether you did it or not.
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> . . . .
>
> Defense Counsel: I don't think he—Mr. Jentz is trying to say that, "I didn't do it," but I think he's trying to explain to the Court the scenario that he wasn't flagrantly snubbing his nose at anyone.
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> The Court: Okay. I think I appreciate that.
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> Defense Counsel: Is that it?
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> Jentz: Yes.
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> . . . .
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> The Court: That doesn't change my mind. I'm hearing you but it doesn't change my mind about things.
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> . . . .

[2] The record indicates Jentz has more than twenty felony convictions.

> Jentz: I didn't mean—I didn't know I could be charged with driving for sitting in a vehicle.
>
> The Court: Okay.
>
> Jentz: I didn't know that, and what you're saying to me is that I deliberately did these things because of my past record that it must have been deliberate or—I didn't know . . . . It's just not making sense to me.
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> The Court: Well, I'm sorry it doesn't make sense to you. I don't know what more I can say that will make it make sense to you, but I feel your sentence is appropriate and I'm going to impose that sentence that I told you I was going to do.
>
> Jentz: Then, I don't know, I would like to withdraw my plea and go to trial and let a jury decide then. I wasn't even doing anything and before judgment [is] out I would like to withdraw my plea.

The State resisted the motion. After hearing argument, the court stated it did not believe there was a basis for withdrawing the plea, but took the matter under advisement. The court issued a written opinion following the hearing, in which it stated the basis for its denial of the motion:

> The matter is in the Court's discretion, but the Court finds no legal reason that the Defendant should be allowed to withdraw his plea. In this instance, the Defendant not only submitted a written guilty plea but the Court spoke to him personally regarding the distinction between submitting a case for trial or for trial on the Minutes or in a guilty plea pursuant to *Alford v. North Carolina*. The Court finds that the Defendant understood what he was doing and only wanted to speak further about the matter after the Court announced its sentencing decision. A Defendant's change of heart is not a basis to allow him to withdraw his plea.

Given the sequence of events, we agree with the district court "that the Defendant understood what he was doing and only wanted to speak further about the matter . . . ." We note that a "defendant should not be permitted to enter a guilty plea, gamble on the sentence and then move to withdraw the plea if he is disappointed with the severity of the sentence imposed." *State v. Vantrump*, 170 N.W.2d 453, 454 (Iowa 1969). The record plainly shows Jentz

understood the nature of the proceedings. He moved to withdraw his plea only after the court announced its sentencing decision, which rejected Jentz's desire for his sentences to run concurrently, rather than consecutively, to his prior sentence in another case. Consequently, there was no procedural, constitutional, or statutory violation in this proceeding, and the court did not abuse its discretion in denying Jentz's motion to withdraw his pleas. *See id.* ("[I]f a defendant, with full knowledge of the charge against him and of his rights and the consequences of a plea of guilty, enters such a plea understandably and without fear or persuasion, the court may without abusing its discretion refuse to permit its withdrawal."). Therefore, we affirm the district court.

III. Ineffective Assistance of Counsel

Jentz next claims trial counsel was ineffective for failing to file a motion to dismiss based on speedy trial grounds, because he entered his pleas over one year after his arraignment. He asserts he never waived his right to be brought to trial in the one-year timeframe under Iowa Rule of Criminal Procedure 2.33(2)(c). As such, he claims he was prejudiced by counsel's failure to perform an essential duty, that is, to move for dismissal.[3]

A defendant may raise an ineffective assistance claim on direct appeal if the record is adequate to address the claim. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). We may either decide the record is adequate and issue a ruling on the merits, or we may choose to preserve the claim for postconviction proceedings. *Id.* We review ineffective assistance of counsel claims de novo.

[3] Jentz asserted a similar argument in *State v. Jentz*, No. 12-1619 (Iowa Ct. App. Nov. 6, 2013), which was also denied.

Id. To succeed on this claim, the defendant must show, first, that counsel breached an essential duty, and, second, that he was prejudiced by counsel's failure. *Id.*

Though it is his burden to establish the motion would have succeeded, Jentz has not set forth any facts upon which we could make that finding. *See Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001) (stating it is the defendant's burden to show both prongs by a preponderance of the evidence). Besides a conclusory statement Jentz never waived his right to trial within one year of arraignment, Jentz has not set forth any facts upon which we may find good cause did not exist and the delay was not attributable to Jentz.

Jentz initially waived his right to a speedy trial at his arraignment on June 14, 2011. From that point on, a great deal of the delay was attributable to the fact Jentz absconded from the State of Iowa from September 2011 until April 2012. Jentz's motions to continue also contributed to the delay. Jentz's first motion to continue was filed on August 12, 2011. Jentz failed to appear for his September pretrial conference and trial, and a warrant was issued for his arrest. On May 14, 2012, upon the State's and Jentz's motions to continue, trial was reset for May 30, but again continued until June 10. Due to "Defendant's numerous trials and counsel's schedule," trial was again continued until August 13, 2012, wherein Jentz "waived speedy trial to accommodate counsel's schedule." On June 22, Jentz reasserted his speedy trial rights. On August 10, Jentz again requested a continuance and trial was reset for October 29.

This sequence of motions and orders indicates good cause existed for the delay. Therefore, Jentz has failed to carry his burden showing a motion to

dismiss would have been successful, and thus has failed to establish he was prejudiced by trial counsel's breach of an essential duty.

Having considered all issues presented by Jentz, we affirm his convictions following his guilty pleas to operating while barred, operating while revoked, and driving while suspended.

AFFIRMED.