IN THE COURT OF APPEALS OF IOWA

No. 2-803 / 12-0144
Filed October 31, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHAD ARNOLD ANDERSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Ian K. Thornhill, Judge.

A defendant appeals his conviction for the offense of sale, transfer, furnish, or receipt of precursors. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie L. Knipfer, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth Reynoldson, Assistant Attorney General, Janet M. Lyness, County Attorney, and Dana Christiansen, Assistant County Attorney, for appellee.

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

VOGEL, P.J.

Defendant, Chad Arnold Anderson, appeals from the judgment and sentencing follow his conviction for sale, transfer, furnish, or receipt of precursors, a class C felony in violation of Iowa Code section 124B.9 (2011). He claims his trial counsel was ineffective and the district court abused its discretion in imposing a sentence. We affirm.

I. Background Facts and Proceedings

On August 12, 2011, Anderson went to multiple stores in the Iowa City area to purchase ingredients used in the production of methamphetamine. While leaving a pharmacy after Anderson purchased coldpacks,[1] the group he was with walked towards a vehicle until a cohort was arrested for having an outstanding warrant, at which point the remainder of the party attempted to walk away. Anderson and the others were apprehended and the vehicle was searched. Police recovered muriatic acid, lye, Coleman fuel, lithium batteries, fish aquarium tubing, coffee filters, a box of pseudoephedrine, and cold packs. Anderson told police that the group had "all agreed that they were going to get the ingredients and then manufacture methamphetamine."

Anderson was arrested and charged by trial information on August 25. On October 6 he notified the court of his intent to plead guilty. The district court granted Anderson's pre-sentence release as he requested. Anderson voluntarily and intelligently pleaded guilty as charged on November 8. On December 2, the

[1] According to the minutes of testimony, coldpacks are used in a certain method of methamphetamine manufacturing.

court was informed in writing that Anderson had violated the terms of his pre-trial release, and an arrest warrant was issued and Anderson was arrested.[2]

On December 30, Anderson appeared for sentencing. The State recommended that the court follow the presentence investigation (PSI) report, which recommended that Anderson be sentenced to ten years imprisonment, suspended, three years probation, with a 365-day placement in Hope House. The court declined this recommendation and sentenced Anderson not to exceed ten years imprisonment and declined to suspend it. The district court denied Anderson's motion to reconsider the sentence and this appeal follows.

II. Ineffective assistance of counsel

First, Anderson claims his trial counsel was ineffective for allowing him to plead when there was not a factual basis established. Ineffective assistance of counsel claims are reviewed de novo. *State v. Hischke*, 639 N.W.2d 6, 8 (Iowa 2002). Failure to file a motion in arrest of judgment does not bar a challenge to a guilty plea if the failure to file the motion resulted from ineffective assistance of counsel. *State v. Bearse*, 748 N.W.2d 211, 217 (Iowa 2008). Trial counsel is ineffective when counsel's performance falls below the normal range of competency, and the inadequate performance prejudices the defendant's case. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). Prejudice is shown by demonstrating a reasonable probability that but for counsel's errors, the result of the proceeding would have been different. *State v. Atwood*, 602 N.W.2d 775, 784 (Iowa 1999).

[2] Anderson was on probation for an unrelated Linn County case. The December 2 violation occurred when probation officers for the Linn County probation came to Anderson's residence for a home check.

Iowa Rule of Criminal Procedure 2.8(2)(b) codifies the requirements of a guilty plea: "The court may refuse to accept a plea of guilty, and shall not accept a plea of guilty without first determining that the plea was made voluntarily and intelligently and has a factual basis." Where a factual basis for a charge does not exist, and trial counsel allows the defendant to plead guilty, and thereafter fails to file a motion in arrest of judgment challenging the plea, counsel has failed to perform an essential duty. *State v*. *Brooks*, 555 N.W.2d 446, 448 (Iowa 1996). Prejudice in such a case is inherent. *See State v*. *Hack*, 545 N.W.2d 262, 263 (Iowa 1996) (holding that where there is no factual basis for a guilty plea, ineffective assistance of counsel is established).

Therefore, our first and only inquiry is whether the record shows a factual basis for Anderson's guilty plea to the charge of sale, transfer, furnishing, or receipt of precursors. In deciding whether a factual basis exists, we consider the entire record before the district court at the guilty plea hearing, including any statements made by the defendant, facts related by the prosecutor, the minutes of testimony, and the presentence report. *State v*. *Schminkey*, 597 N.W.2d 785, 788 (Iowa 1999). When established in the factual basis for a guilty plea, "the trial court is not required to extract a confession from the defendant;" it must only be satisfied that the facts support the crime. *State v*. *Keene*, 630 N.W.2d 579, 581 (Iowa 2001).

Iowa code section 124B.9(1) provides:

> A person who sells, transfers, or otherwise furnished a precursors substance with knowledge or the intent that the recipient will use the precursors substance to unlawfully manufacture a controlled substance commits a class "C" Felony.

Anderson claims that there is no evidence that he sold, transferred, or furnished procurers. Anderson told the court that he possessed the precursors in the vehicle but because the arrest happened while everyone was around the car together, the actual transfer never happened. The State agrees with Anderson's claim that the precursor had not been "sold" or "transferred" to another at the time of the arrest, however the State asserts the factual basis supplied by Anderson, through the oral colloquy together with the minutes of testimony, was sufficient to support that Anderson "otherwise furnish[ed]" the precursor.

Considering the entire record before the district court, we find that there was sufficient factual basis to accept Anderson's plea. The oral colloquy, together with the minutes of testimony accepted by Anderson,[3] show that Anderson and four friends made plans to manufacture methamphetamine. Anderson acknowledged buying Coleman fuel, intending that it be used in the manufacturing process. The fuel was found in the car at the time the group was arrested walking out of the pharmacy with additional ingredients. Anderson admitted he placed the fuel in the car knowing that when he gave it to another group member, they were going to use it to manufacture methamphetamine. Even applying the definition of "furnish"[4] suggested by Anderson in his brief, "to provide with what is needed," the factual basis is present. Anderson provided the group with the fuel needed to manufacture methamphetamine with the intent that it be used accordingly. There was sufficient factual basis for the guilty plea, and

[3] After confirming that Anderson had an opportunity to review the minutes of testimony, the district court specifically asked him: "And do you believe and agree that those Minutes are substantially correct?" Anderson replied: "Yes, sir."

[4] Definition supplied by Anderson purportedly from Merriam-Webster's Collegiate Dictionary 508 (11th ed. 2011).

counsel was therefore not ineffective for allowing the plea or failing to file a motion in arrest of judgment attacking the plea.

III. Sentencing

Anderson next claims the district court abused its discretion in imposing the prison sentence rather than suspending the sentence and placing him on probation as was the recommendation of both counsel and the PSI. We review sentencing decisions for abuse of discretion, which will be found if the district court acted on grounds clearly untenable or to an extent clearly unreasonable. *State v*. *Leckington*, 713 N.W.2d 208, 216 (Iowa 2006).

While awaiting sentencing, Anderson was arrested for interference with a department of correctional services officer. When the probation officers came to Anderson's house in early December for a home check in an unrelated Linn County case, they found Anderson with bloodshot, watery eyes, two clear grocery bags filled with empty beer cans, beer in the refrigerator, and a clear plastic bag containing a powdery substance which tested positive for methamphetamines. All of these are violations of the terms of release. Anderson also has had a history of contempt charges while on probation for other crimes. The sentencing judge, considering the recommendation of both counsel and the PSI, found Anderson has not been amenable to probation and declined to suspend the ten year sentence.

Simply because a more lenient sentence was available but not imposed does not amount to an abuse of discretion. Based on the record, Anderson cannot make the affirmative showing of abuse necessary to overcome the strong presumption in favor of the district court's sentence. *See State v*. *Lyod*, 530

N.W.2d 708, 713 (Iowa 1995). The district court did not consider any improper factors,[5] did not make any single sentencing factor determinative, and, ultimately, the punishment fit the crime and Anderson.

IV. Conclusion

Because there was a sufficient factual basis for the district court to accept Anderson's guilty plea, his trial counsel was not ineffective for allowing him to plead guilty. Furthermore, the district court did not abuse its discretion in declining to suspend Anderson's sentence.

AFFIRMED.

[5] Iowa Code § 901.5 mandates the pronouncement and sentencing for criminal defendants:

> "After receiving and examining all pertinent information, including the presentence investigation report and victim impact statements, if any, the court shall consider the following sentencing options. The court shall determine which of them is authorized by law for the offense, and of the authorized sentences, which of them or which combination of them, in the discretion of the court, will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others."