

IN THE COURT OF APPEALS OF IOWA

No. 3-437 / 12-0951
Filed May 30, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER BROWN,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Cheryl E. Traum,
District Associate Judge.

A defendant appeals from his guilty plea asserting his counsel was
ineffective in failing to file a motion to suppress. **AFFIRMED.**

Timothy J. Tupper of Tupper Law Firm, Davenport, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant
Attorney General, Michael J. Walton, County Attorney, and Robert C. Bradfield,
Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

VOGEL, P.J.

Christopher Brown appeals following his guilty plea to driving while barred as a habitual offender, in violation of Iowa Code sections 321.555 and 321.561 (2011). He asserts his counsel was ineffective for failing to file a motion to suppress the evidence following the stop of his vehicle. The officer stopped Brown's vehicle when he observed the center brake light was not functioning. The officer cited Brown for a violation of section 321.404.¹ Brown asserts on appeal the stop violated his right against unreasonable searches and seizures because section 321.404 does not specify that the center break light must be operable and there was no indication in the record that either the right or left break light was inoperable at the time of the stop. We affirm his conviction because the record is inadequate to address Brown's ineffective-assistance-of-counsel claim on direct appeal.

Brown filed a written plea of guilty to the driving-while-barred offense. He waived his right to be present for the entry of the guilty plea and sentencing, and filed a "written application to waive motion in arrest of judgment."

A guilty plea waives all defenses and objections that are not intrinsic to the plea. *State v. Utter*, 803 N.W.2d 647, 651 (Iowa 2011).

This means "[w]hen a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the

¹ Iowa Code section 321.404 provides:

Every motor vehicle shall be equipped with a signal lamp or signal device which is so constructed and located on the vehicle as to give a signal of intention to stop, which shall be red or yellow in color, which signal shall be plainly visible and understandable in normal sunlight and at night from a distance of one hundred feet to the rear but shall not project a glaring or dazzling light.

entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea”

Id. (quoting *Tollett v. Henderson*, 411 U.S. 258, 267 (1973)). “One way a defendant can intrinsically challenge the voluntary and intelligent nature of his or her guilty plea is to prove ‘the advice he [or she] received from counsel in connection with the plea was not within the range of competence demanded of attorneys in criminal cases.’” *Id.* (quoting *State v. Carroll*, 767 N.W.2d 638, 642 (Iowa 2009)).

While Brown does not allege his guilty plea was defective in some way because of counsel’s failures, our supreme court has found this argument “inherent” when a defendant alleges counsel was ineffective in failing to perform some action prior to the guilty plea. *Id.* at 652. We thus proceed with the assumption that Brown’s claim is that counsel’s failure to file a motion to suppress caused him to “improvidently plead guilty to the charge” that would have otherwise been dismissed had counsel performed effectively by filing a motion to suppress. *See id.*

In order to prove his claim, Brown must show “trial counsel breached an essential duty prior to [his] guilty plea” and this breach “rendered [his] plea unintelligent or involuntary.” *See id.* We start with the presumption that counsel performed competently. *Id.* In addition, in order to prove prejudice, Brown must establish that he would not have pleaded guilty but would have insisted on standing trial had counsel not breached his duty. *See id.* at 654.

Generally, ineffective-assistance claims are preserved for postconviction relief proceedings to permit the development of a more complete record and

provide counsel an opportunity to defend the claims made. *State v. Shanahan*, 712 N.W.2d 121, 136 (Iowa 2006). If we find the record is adequate to address the claim, we will decide it on direct appeal; if not, we preserve the claim. *Id.* In this case, we find the record inadequate to address Brown's claim. See *Carroll*, 767 N.W.2d at 645. We have no information regarding counsel's investigation into the circumstances surrounding the stop, and we have no information as to the advice counsel provided to Brown prior to his guilty plea. In addition, we have no information as to the circumstances surrounding the stop except for what is contained in the police report. Because we find the record inadequate to address Brown's claim of ineffective assistance of counsel, we affirm his conviction and preserve his claim for possible postconviction relief proceedings.

AFFIRMED.