

**IN THE COURT OF APPEALS OF IOWA**

No. 8-010 / 07-0073  
Filed February 27, 2008

**ALAN DUANE BEARD,**  
Applicant-Appellant,

**vs.**

**STATE OF IOWA,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Boone County, Gary L. McMinimee, Judge.

Applicant appeals from the denial of his application for postconviction relief. **SENTENCE VACATED AND REMANDED.**

Mark C. Smith, State Appellate Defender and Theresa Wilson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl Soich, Assistant Attorney General, and Jim Robbins, County Attorney, for appellee State.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

**VOGEL, J.**

Alan Beard was originally charged with one count of second-degree sexual abuse, in violation of Iowa Code section 709.9(2) (2003). Pursuant to a plea agreement, Beard later pleaded guilty to one count of third-degree sexual abuse, in violation of section 709.4(2)(a), and one count of lascivious acts with a child, in violation of section 709.8. Beard did not file a motion in arrest of judgment and did not directly appeal from his convictions.

On February 24, 2006, Beard filed a pro se application for postconviction relief (PCR), claiming a lack of DNA evidence and that the victim's mother failed to turn over a relevant videotape. The court later appointed counsel to represent Beard and counsel filed an amended petition, alleging claims of ineffective assistance of counsel, in particular for failing to have Beard's competency determined, failing to move in arrest of judgment, and failing to move to suppress evidence based on Beard's diminished capacity. The court then appointed Dr. Craig Rypma to evaluate the claim of lack of capacity to enter the guilty plea. Following a trial, the court denied Beard's application, concluding he had not met his burden to overcome the presumption he was competent at the time of entering his plea and therefore failed to prove his counsel was ineffective. It also rejected the pro se claims.

Beard filed a timely appeal from this postconviction ruling. On appeal, Beard now alleges for the first time that his trial counsel provided ineffective assistance for failing to challenge his guilty plea due to its lack of a factual basis. He also claims postconviction counsel was ineffective in failing to allege the ineffectiveness of trial counsel. He also argues postconviction counsel failed to

properly support his claim of incompetency and that the postconviction court erred in refusing to permit him to present his pro se claims.

We typically review postconviction relief proceedings on error. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). However, when the applicant asserts a claim of constitutional nature, such as ineffective assistance of counsel, we evaluate the totality of the circumstances in a de novo review. *Id.*

It is axiomatic that a trial court “may not accept a guilty plea without first determining that the plea has a factual basis.” *State v. Schminkey*, 597 N.W.2d 785, 788 (Iowa 1999). If a defendant enters a plea of guilty to a crime and the record fails to disclose a factual basis, defense counsel fails to provide effective assistance and prejudice is inherent under the circumstances. *Id.*

The State concedes neither of the pleas are supported by a factual basis. We therefore conclude Beard’s guilty plea counsel provided ineffective assistance in failing to move in arrest of judgment. See *State v. Keene*, 630 N.W.2d 579, 581 (Iowa 2001) (finding error preserved on challenge to guilty plea where failure to file motion in arrest of judgment due to ineffective assistance of counsel). Postconviction counsel was therefore ineffective as well in failing to assert the ineffectiveness of guilty plea counsel on this ground. *Dunbar v. State*, 515 N.W.2d 12, 14-15 (Iowa 1994) (stating ineffectiveness of postconviction counsel amounts to sufficient reason to excuse applicant’s failure to raise issue in prior proceedings).

Both Beard and the State request that we remand in order to provide the State further opportunity to establish a factual basis for the plea. See *State v. Royer*, 632 N.W.2d 905, 909-10 (Iowa 2001). We grant this request.

Beard next claims postconviction counsel rendered ineffective assistance when he “failed to properly support his claim of applicant’s incompetency” by obtaining a formal competency evaluation, and that the failure to do so constituted ineffective assistance. We reject this contention. A defendant is not entitled to perfect representation, but only that which is in the reasonable range of competency. *Karasek v. State*, 310 N.W.2d 190, 192 (Iowa 1981). Here, counsel recognized Beard’s competency as an issue and was granted authorization to hire an expert. While this expert did not perform a formal competency evaluation, he did perform two hours of testing and interviewed Beard for testing.

Beard also claims the postconviction court erred “when it did not permit [him] to present his pro se claims.” We find the postconviction court did address and reject the claims made in Beard’s pro se application. We further conclude the court properly rejected them as having been waived. *See State v. Speed*, 616 N.W.2d 158, 159 (Iowa 2000) (noting a guilty plea waives all defenses which are not intrinsic to the plea).

Finally, Beard has filed a pro se brief on appeal. This brief appears to consist mainly of factual allegations. Whatever legal claims may be raised are not supported by citation to authority. *See Iowa R. App. P. 6.14(1)(c)*. Accordingly, we decline to address them.

**SENTENCE VACATED AND REMANDED.**