

IN THE COURT OF APPEALS OF IOWA

No. 17-1716
Filed June 6, 2018

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRIAN MCCONNELEE
Defendant-Appellant.

Appeal from the Iowa District Court for Delaware County, Stephanie C. Rattenborg, District Associate Judge.

Brian McConnelee appeals from judgment and sentence entered upon his guilty plea. **AFFIRMED.**

John J. Bishop, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, and Louis S. Sloven, Assistant Attorney General, for appellee.

Considered by Danilson, C.J., and Mullins and McDonald, JJ.

DANILSON, Chief Judge.

Brian McConnelee appeals from judgment and sentence entered upon his guilty plea, contending his attorney was ineffective in allowing him to plead guilty without a factual basis. We affirm.

McConnelee entered into an agreement whereby he would plead guilty to the charge of possession of a controlled substance (methamphetamine), second offense, in violation of Iowa Code section 124.401(5) (2016), and the State would drop charges of third-offense possession of a controlled substance and operating while license revoked. The district court accepted McConnelee's plea and entered an order imposing a sentence of two years in prison; a fine of \$625, which was suspended; a \$125 law enforcement surcharge; a \$10 DARE fee; and a 180 day driver's license suspension. McConnelee appeals.

"Where a factual basis for a charge does not exist, and trial counsel allows the defendant to plead guilty anyway, counsel has failed to perform an essential duty." *State v. Schminkey*, 597 N.W.2d 785, 788 (Iowa 1999). "A factual basis can be discerned from four sources: (1) inquiry of the defendant, (2) inquiry of the prosecutor, (3) examination of the presentence report, and (4) minutes of evidence." *State v. Ortiz*, 789 N.W.2d 761, 768 (Iowa 2010). "[W]e have held the record does not need to show the totality of evidence necessary to support a guilty conviction, but it need only demonstrate facts that support the offense." *Id.*

McConnelee argues there is nothing in the record to support a finding he "knowingly or intentionally possessed a controlled substance." Intent is rarely subject to direct proof. See *Schminkey*, 597 N.W.2d at 789. "[T]he facts and circumstances surrounding the act, as well as any reasonable inferences to be

drawn from those facts and circumstances, may be relied upon to ascertain the defendant's intent." *Id.*

Here, the minutes of evidence show McConnelee had "a large object in [his] front right pocket," which turned out to be "two items of drug paraphernalia": "one item was a pink broken meth pipe and the other was a light bulb meth pipe with residue." Officer Trumblee recognized the items as paraphernalia used to consume methamphetamine. Officer Trumblee "also located a scale, several baggies, and a silver triangle in the pocket of [McConnelee's] hooded sweatshirt," and "the triangle also had residue on it." Field-testing of the paraphernalia indicated the pink pipe tested positive for methamphetamine. This circumstantial evidence supports a very reasonable inference that McConnelee knowingly and intentionally possessed methamphetamine.

McConnelee has failed to prove counsel breached a duty in allowing him to plead guilty. We therefore affirm.

AFFIRMED.