IN THE COURT OF APPEALS OF IOWA

No. 17-0163
Filed November 22, 2017

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TERRY RAYMOND,
Defendant-Appellant.

Appeal from the Iowa District Court for Muscatine County, Nancy S. Tabor (plea) and Stuart P. Werling (sentencing), Judges.

A defendant appeals from the judgment entered pursuant to his guilty plea.

AFFIRMED.

Jack E. Dusthimer, Davenport, for appellant.

Thomas J. Miller, Attorney General, and Tyler J. Buller, Assistant Attorney General, for appellee.

Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Tabor, J., takes no part.

VOGEL, Presiding Judge.

Terry Raymond appeals his convictions following a guilty plea to possession with intent to distribute marijuana, failure to affix a drug tax-stamp, and two counts of theft in the second degree.

I. Background Facts and Proceedings

On November 20, 2015, officers executed a search warrant at Raymond's residence. Officers seized marijuana, drug paraphernalia, two sawed off shotguns, three rifles, ammunition, a dirt bike, and a snowmobile. Officers conducted an interview with Raymond after he waived his *Miranda* protections.[1] Raymond admitted to possessing marijuana and gave various accounts of how he obtained the guns, the snowmobile, and the dirt bike.

Raymond was charged with possession with intent to distribute marijuana, in violation of Iowa Code section 124.401(1)(d) (2015); failure to affix a drug tax-stamp, in violation of Iowa Code section 453B.12; two counts of theft in the second degree, in violation of Iowa Code sections 714.1 and 714.2; five counts of felon in possession of a firearm, in violation of Iowa Code section 724.26; and two counts of possession of an offensive weapon, in violation of Iowa Code sections 724.1(1)(b) and 724.3. All charges carried the habitual offender sentencing enhancement. *See* Iowa Code § 902.8. Pursuant to the written plea agreement, the five counts of possession of a firearm and two counts of possession of an offensive weapon were dismissed. The plea agreement contained the

[1] *See Miranda v. Arizona*, 384 U.S. 436, 479 (1966) (requiring the police to advise suspects of their rights under the Fifth and Fourteenth Amendments before beginning a custodial interrogation).

recommended fines to be imposed and a combined sentence of twenty years, with no mandatory minimum. After a hearing on the record, the district court accepted Raymond's plea and sentenced him in accordance with the terms of the plea agreement.

Raymond appeals, asserting his counsel was ineffective in allowing him to plead guilty because the plea to tax stamp charge was not made voluntarily and intelligently and the plea to the theft charges lacked a factual basis. *See* Iowa R. Crim. P. 2.8(2)(b). He also asserts the court abused its discretion in imposing the sentence.[2]

II. Standard of Review

Challenges to guilty pleas are ordinarily reviewed for the correction of errors at law. *State v. Fisher*, 877 N.W.2d 676, 680 (Iowa 2016). We review ineffective-assistance-of-counsel claims de novo. *State v. Gant*, 597 N.W.2d 501, 504 (Iowa 1999).

III. Guilty Plea

Raymond asserts his counsel was ineffective for allowing him to plead guilty when (1) he was not fully aware his driver's license would be revoked on the drug-tax-stamp charge as required in *Fisher*, 877 N.W.2d at 684; and (2) his plea to the theft charges lacked a factual basis that established he did not intend "to promptly restore" the stolen property to its owner or to a public officer under section 714.1(4).

To establish an ineffective-assistance claim, Raymond must "prove by a preponderance of the evidence that his trial counsel failed to perform an essential

[2] Raymond does not appeal from the possession-with-intent-to-deliver-marijuana charge.

duty and that this failure resulted in prejudice." *Gant*, 597 N.W.2d at 504. If he fails to prove either prong, we will affirm. *Id*. In the context of a guilty plea, establishing prejudice requires Raymond to show "a reasonable probability that, but for counsel's alleged errors, he would not have [pleaded] guilty and would have insisted on going to trial." *See State v. Carroll*, 767 N.W.2d 638, 641 (Iowa 2009). We do not ordinarily address ineffective-assistance-of-counsel claims on direct appeal unless the record is sufficient to dispose of such claims. *Gant*, 597 N.W.2d at 504. Here, the record is sufficient for us to do so.

At the plea hearing, Raymond was informed by the court his driver's license would be revoked for 180 days on the possession-with-intent-to-deliver charge. *See* Iowa Code § 901.5(10). When the court asked whether the revocation of license applied to the drug-tax-stamp violation, the assistant county attorney responded she did not believe it was applicable. Although the State incorrectly advised the court section 901.5(10) did not apply to the tax-stamp charge, Raymond was nonetheless informed his license would be revoked for the same period of time on the possession charge. He cannot assert his plea was not voluntarily or intelligently made by this omission when the consequence of revocation is exactly the same upon a guilty plea for both charges. Nor can he show any prejudice as his license is revoked regardless of the crime to which the revocation attached. *See id.* (allowing for 180-day license revocation for both controlled substance and controlled substance tax offenses).

Raymond next asserts his counsel was ineffective in allowing him to plead guilty to the two theft charges as they lacked a factual basis. *See* Iowa R. Crim.

P. 2.8(2)(b).[3] To provide a factual basis for a plea, the court may rely on the minutes of evidence. *State v. Johnson*, 528 N.W.2d 638, 640 (Iowa 1995). In this case, the written plea stated, "[T]he defendant agrees that the court may accept as true the entire contents of the Minutes of Evidence." Contained in the minutes are various accounts and changing explanations of how Raymond obtained the snowmobile and dirt bike, including that Raymond possessed the dirt bike for over one year. The minutes also indicated Raymond had no intent to "promptly restore" either item to the owner or public official. Moreover, in its plea colloquy regarding the second-degree theft charges, the court explained the State had to prove "it was not [Raymond's] intent to immediately return it to the owner or turn it over to the police." When asked if he understood, Raymond replied "Yes, your Honor." It is clear the record established a factual basis for the theft charges, and therefore, counsel was not ineffective in allowing Raymond to enter those guilty pleas.

IV. Sentencing

Next, Raymond asserts the district court abused its discretion in sentencing him to consecutive sentences without indicating the reasons for doing so.

> Iowa Rule of Criminal Procedure [2.23(3)(d)] requires a trial court to state on the record its reasons for selecting a particular sentence. Although the reasons need not be detailed, at least a cursory explanation must be provided to allow appellate review of the trial court's discretionary action. A trial court must also give reasons for its decision to impose consecutive sentences.

State v. Jacobs, 607 N.W.2d 679, 690 (Iowa 2000).

In its sentencing order, the district court stated:

[3] Iowa R. Crim. P. 2.8(2)(b) provides, in part: "The court may refuse to accept a plea of guilty, and shall not accept a plea of guilty without first determining that the plea is made voluntarily and intelligently and has a factual basis."

> As to count ten, theft in the second degree, and as to count eleven, theft in the second degree, in violation of section 714.2 of the Code, and as provided by sections 902.3 and 902.9, it is the judgment and sentence of the court that as to each charge you shall serve a term of incarceration of five years, pay the minimum fine of $750, the [thirty-five] percent surcharge assessed by the clerk of court, a $125 law enforcement initiative fee, and provide a DNA sample.
>
> Because of the multiplicity of these offenses, because of the criminal history involved and the lack of other resources available to the court, the court finds that it is appropriate in this case that the sentences be served consecutively, one after the other.
>
> This is done for the protection of the public pursuant to the recommendation of the PSI author and based on the defendant's criminal history, which, again, as indicated, has utilized all less restrictive sentencing options available through the community.

The district court explicitly stated consecutive sentences were appropriate in this case and stated its reasons for imposing consecutive sentences. We therefore reject Raymond's request to vacate the sentences. The district court provided reasons for the imposition of consecutive sentences sufficient to comport with the Iowa Rules of Criminal Procedure and our case law.

V. Conclusion

We affirm Raymond's conviction and sentence, and Raymond's ineffective-assistance-of-counsel claims fail.

AFFIRMED.