

**IN THE COURT OF APPEALS OF IOWA**

No. 0-242 / 09-0968  
Filed May 12, 2010

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**TIANA SIEN PONCIANO,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Mark D. Cleve (plea hearing) and James E. Kelley (judgment), Judges.

A defendant appeals the judgment entered on her guilty plea, contending that counsel was ineffective in failing to object to her third-degree burglary plea on the ground that it lacked a factual basis. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, Michael J. Walton, County Attorney, and Kelly Cunningham, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., Doyle, J., and Mahan, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**VAITHESWARAN, P.J.**

Tiana Sien Ponciano entered her father's home without his permission while he was out and took blank checks and other items. The State charged her with third-degree burglary and three other crimes. Ponciano pleaded guilty to the charges.

On appeal, Ponciano contends her attorney was ineffective in failing to object to her third-degree burglary plea on the ground that it lacked a factual basis. To prevail, she must show that counsel breached an essential duty and that prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). Breach and prejudice are presumed if a defense attorney allows a defendant to plead guilty to a charge lacking a factual basis. *State v. Hallock*, 765 N.W.2d 598, 603 (Iowa Ct. App. 2009). Therefore, the critical inquiry is whether there was a factual basis for Ponciano's plea to the burglary charge.

Burglary is defined as follows:

Any person, having the intent to commit a felony, assault or a theft therein, who, having no right, license or privilege to do so, enters an occupied structure, such occupied structure not being open to the public, or who remains therein after it is closed to the public or after the person's right, license or privilege to be there has expired, or any person having such intent who breaks an occupied structure, commits burglary.

Iowa Code § 713.1 (2009). Ponciano only challenges the factual basis for the intent element. She contends the record fails to disclose she had "the intent to commit a felony" at the point when she entered the premises.

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). That record contains circumstantial evidence of Ponciano's intent. See *State v. Finnel*, 515 N.W.2d 41, 42–43 (Iowa 1994) (“Usually proof of intent will depend upon circumstantial evidence and inferences drawn from such evidence.”).

First, the presentence investigation report includes the following statements Ponciano made in jail:

I went into my father[’s] house at the beginning of December and I took 3 checks that did not belong to me, ripped them out of his check book; in the following days I proceeded to write them out to myself, sign my father’s name and cash them at various banks. I then used the money to buy household items, food and pay the deposit at [an apartment].

Additionally, the minutes of testimony disclose that Ponciano was addicted to drugs and previously took items from the family. The month before this incident, she opened credit card accounts in her father’s name without his authorization. On the evening of this incident, she had a key to her father’s house, but did not have permission to enter. Ponciano’s brother was getting married that evening and no one was at her father’s house. When her father returned to the home, he found it ransacked.

We recognize that Ponciano’s statements at the plea proceeding were equivocal on the question of her intent at the time she entered the house. Specifically, she testified that she went to the house to retrieve some of her belongings and only formed an intent to steal after she entered the home. Notwithstanding these statements, the timing of the entry to coincide with her brother’s wedding, the fact that she did not have permission to enter, and the fact

that the home was ransacked indicate that Ponciano possessed an intent to commit the felony when she entered. See *State v. Smothers*, 309 N.W.2d 506, 510 (Iowa 1981) (finding factual basis from surrounding facts despite defendant's statements to court that he lacked intent at time of entry).

As Ponciano's plea to third-degree burglary was supported by a factual basis, defense counsel was not ineffective in failing to challenge the factual basis.

We affirm Ponciano's conviction for third-degree burglary.

**AFFIRMED.**