

IN THE COURT OF APPEALS OF IOWA

No. 0-884 / 10-0633
Filed December 22, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

WILLIAM FREDRICK CASADY,
Defendant-Appellant.

Appeal from the Iowa District Court for Webster County, Kurt L. Wilke (plea) and Allan L. Goode (sentencing), Judges.

William Casady appeals from his conviction and sentence entered on a plea of guilty for felon in possession of a firearm. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis D. Hendrickson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth Reynoldson, Assistant Attorney General, Ricki L. Osborn, County Attorney, and Jennifer Bonzer, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Doyle, JJ. Tabor, J., takes no part.

DOYLE, J.

William Casady appeals from the judgment and sentence entered following his guilty plea to the charge of felon in possession of a firearm as an habitual offender in violation of Iowa Code sections 724.26 and 902.8 (2009). He contends his trial counsel was ineffective in handling his guilty plea. Upon our review, we affirm the judgment and sentence.

I. Background Facts and Proceedings.

According to the minutes of testimony, on July 10, 2009, Matt Bruner, a state conservation officer employed by the Iowa Department of Natural Resources, came upon Casady fishing along the Des Moines River. Bruner approached Casady to check for his fishing license. Casady showed Bruner his fishing license and his catch. As Casady bent over to pick up a fishing rod, Bruner observed a pistol sticking out of holster on Casady's right hip. Bruner asked Casady to unload the gun and place it on the ground, and Casady complied. Bruner took the gun and nine live .22 caliber bullets. Bruner then ran a check of Casady's criminal record and was advised Casady was a felon. Bruner then arrested Casady.

A trial information charged Casady with possession of a firearm as a felon in violation of Iowa Code section 724.26. The trial information was later amended to include the habitual offender sentencing enhancement under sections 902.8 and 902.9. Casady appeared before the district court and entered a plea to the charge. He was later sentenced to serve a term of incarceration not to exceed fifteen years, with a three-year mandatory minimum before parole eligibility.

Casady appeals. He contends his counsel was ineffective in failing to challenge the adequacy of the guilty plea on the ground the record failed to establish a factual basis for the plea.

II. Scope and Standards of Review.

Failure to file a motion in arrest of judgment generally precludes challenges to a guilty plea on appeal. Iowa Rs. Crim. P. 2.24(3)(a), 2.8(2)(d); *State v. Kress*, 636 N.W.2d 12, 19 (Iowa 2001). However, the failure to file a motion in arrest of judgment will not preclude the claim if the failure was the result of ineffective assistance of counsel. *State v. Bearse*, 748 N.W.2d 211, 218 (Iowa 2008); *Kress*, 636 N.W.2d at 19.

Our review of ineffective assistance of counsel claims is de novo. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). We typically preserve these claims for postconviction relief although we will resolve them on direct appeal if the record is adequate. *State v. Ray*, 516 N.W.2d 863, 865 (Iowa 1994). We conclude the record in this case is adequate to decide this issue.

III. Discussion.

Casady claims his trial counsel was ineffective for failing to challenge the validity of his plea of guilty on the ground the record failed to establish the requisite factual basis for the plea. To establish his claim of ineffective assistance of counsel, Casady “must prove by a preponderance of the evidence that (1) his counsel failed to perform an essential duty, and (2) prejudice resulted.” *State v. Tate*, 710 N.W.2d 237, 240 (Iowa 2006) (quoting *State v. Tejada*, 677 N.W.2d 744, 754 (Iowa 2004)). If he fails to prove either prong of the claim, it must fail. *State v. Liddell*, 672 N.W.2d 805, 809 (Iowa 2003). Under

the first prong of this test, “counsel’s performance is measured against the standard of a reasonably competent practitioner with the presumption that the attorney performed his duties in a competent manner.” *State v. Dalton*, 674 N.W.2d 111, 119 (Iowa 2004).

The district court may not accept a guilty plea without first determining that the plea has a factual basis. . . . 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. Prejudice in such a case is inherent.

State v. Schminkey, 597 N.W.2d 785, 788 (Iowa 1999) (internal citations omitted). Therefore, our first and only inquiry is whether the record shows a factual basis for Casady’s plea. *Id.* “[W]e 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, [and] the minutes of testimony” *Id.*

Casady does not dispute he had multiple prior felony convictions. Rather he argues the record does not contain sufficient evidence that he “knowingly” possessed the firearm.¹ We disagree as the record is replete with references to Casady’s knowledge that he possessed the firearm.²

During the plea colloquy, Casady explained he had been fishing down by the river and could not find his stringer. After catching a couple of fish, he walked up a hill to his four-wheeler to see if it contained some twine or other material from which he could fashion a stringer. At about this time a part-time employee

¹ A convicted felon “who knowingly has under the person’s dominion and control or possession . . . a firearm . . . is guilty of a class ‘D’ felony.” Iowa Code § 724.26.

² Iowa’s uniform jury instructions define knowledge to mean the defendant had a “conscious awareness” of the element requiring knowledge. Iowa Bar Ass’n, *Iowa Crim. Jury Instructions* 200.2 (available at <http://iabar.net>).

stopped by, and the two men talked. Casady lifted up the seat to the four-wheeler and saw a plastic grocery bag in the compartment. He reached in and grabbed it. He discovered a pistol in the bag. The other man asked to see the gun, but Casady stuck it in his pocket, pulled out his cell phone and called his wife. Just after leaving a voicemail message, state conservation officer Bruner showed up. Casady was subsequently arrested.

The court asked Casady why he put the gun in his pocket. Casady responded that he had nowhere to secure it down by the river, so he “just stuck it in [his] pocket, so [he] could use [his] hands to use [his] cell phone and call [his wife].” He admitted the gun was on his person when Bruner arrived. He admitted handing the gun over to Bruner. Casady stated: “I’m not disputing the fact that I did have the firearm on me when [Bruner] pulled up.” Additionally, Bruner’s observations corroborate Casady’s statements.

Casady’s statements alone provide sufficient factual basis for his plea of guilty as they demonstrate Casady had a conscious awareness he was in possession of the firearm. After our de novo review of the record, we conclude a factual basis exists to support Casady’s plea of guilt. Accordingly, Casady’s counsel was not ineffective for permitting him to plead guilty. We therefore affirm the judgment and sentence.

AFFIRMED.