

IN THE COURT OF APPEALS OF IOWA

No. 1-303 / 10-1223
Filed May 25, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ORLANDO DAVID RODRIGUEZ,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Defendant appeals his conviction, based on his guilty plea, to homicide by vehicle, and his sentence. **CONVICTION AFFIRMED; SENTENCE VACATED IN PART.**

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

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, John P. Sarcone, County Attorney, and Steve Foritano and David Porter, Assistant County Attorneys, for appellee.

Considered by Vogel, P.J., Vaitheswaran, J., and Mahan, S.J.* Tabor, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MAHAN, S.J.

Orlando Rodriguez entered an *Alford* plea of guilty to Count II of the trial information in this case on May 20, 2010.¹ Count II charged the offense of homicide by vehicle, a class “C” felony, in violation of Iowa Code section 707.6A(2) (2009). As a result of the plea agreement, Counts I and III were dismissed. Rodriguez was sentenced on June 23, 2010, to serve a prison sentence not to exceed ten years and ordered to pay \$125 for the law enforcement initiative surcharge. Rodriguez appeals.

Rodriguez alleges there was an insufficient factual basis to support the guilty plea. He raises this issue in the context of an ineffective assistance of counsel claim. Following a careful review, we conclude a sufficient factual basis did exist to support the plea in this case. See *State v. Dalton*, 674 N.W.2d 111, 116-17 (Iowa 2004); *State v. Johnson*, 234 N.W.2d 878, 879 (Iowa 1975). Therefore, Rodriguez’s claim of ineffective assistance of counsel must fail. See *State v. Brooks*, 555 N.W.2d 446, 448 (Iowa 1996).

Rodriguez next alleges the district court erred in imposing the \$125 fine for the law enforcement initiative surcharge. The State concedes this was error. Therefore, both Rodriguez and the State agree this part of the sentence should be vacated. We conclude this invalid portion of the sentence can be severed from the valid portion. See *State v. Hutt*, 548 N.W.2d 897, 899 (Iowa Ct. App. 1996). We therefore choose to vacate this invalid portion of the sentence. The remainder of the sentence imposed on June 23, 2010, shall stand.

CONVICTION AFFIRMED; SENTENCE VACATED IN PART.

¹ The case of *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167, 27 L. Ed. 2d 162, 171 (1970), holds that an accused may consent to the imposition of a sentence even if the person is unwilling or unable to admit to committing the crime.