

**IN THE COURT OF APPEALS OF IOWA**

No. 1-352 / 10-1189  
Filed May 25, 2011

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

**vs.**

**CINTHIA CALLEJAS-SOLORZANO,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Henry County, Emily S. Dean,  
District Associate Judge.

Defendant appeals her conviction, based upon her guilty plea, to identity  
theft. **AFFIRMED.**

Rachel C.B. Antonuccio of Cole & Vondra, L.L.P., Iowa City, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant  
Attorney General, Darin Stater, County Attorney, and Ed Harvey, Assistant  
County Attorney, for appellee.

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

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

**HUITINK, S.J.****I. Background Facts & Proceedings.**

The minutes of testimony present the following facts: On July 17, 2008, Emilee Deutch reported to police officers that someone had been using her identity. She learned someone had used her name, date of birth, and Social Security number in obtaining medical services at Great River Medical Center. Deutch contacted a Social Security representative and found out someone using her name and Social Security number had worked at West Liberty Foods. Deutch then called West Liberty Foods and was given the person's address in Mt. Pleasant, Iowa.

Police officers determined the person had been employed at West Liberty Foods from December 10, 2007, until May 9, 2008. They went to the address provided by West Liberty Foods and found Cinthia Callejas-Solorzano, who admitted she had been using the name Emilee Deutch. Callejas-Solorzano was a native of Mexico. She stated she had purchased a driver's license and Social Security card in Deutch's name.

On June 1, 2010, Callejas-Solorzano was charged by trial information with forgery and identity theft. As part of a plea agreement, on June 28, 2010, defendant entered a written plea of guilty to identity theft, an aggravated misdemeanor, in violation of Iowa Code section 715A.8 (2009). The court sentenced defendant to thirty days in jail, less credit for time served, and to pay a fine of \$625, which was suspended. Defendant appeals, claiming she received ineffective assistance of counsel.

## **II. Standard of Review.**

We review claims of ineffective assistance of counsel de novo. *State v. Bergmann*, 600 N.W.2d 311, 313 (Iowa 1999). To establish a claim of ineffective assistance of counsel, a defendant must show (1) the attorney failed to perform an essential duty and (2) prejudice resulted to the extent it denied defendant a fair trial. *State v. Carroll*, 767 N.W.2d 638, 641 (Iowa 2008). A defendant claiming ineffective assistance of counsel concerning a guilty plea must prove that, but for counsel's breach, there was a reasonable probability she would have insisted on going to trial. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006).

## **III. Ineffective Assistance.**

**A.** Defendant claims she received ineffective assistance because her defense counsel permitted her to plead guilty to identity theft when there was no factual basis for the plea. She was convicted of the crime as an aggravated misdemeanor, where the value of the credit, property, or services obtained by identity theft does not exceed \$1000. See Iowa Code § 715A.8(3). Defendant claims there was no factual basis to show she obtained credit, property, or services, the value of which did not exceed \$1000.

It is ineffective assistance for counsel to allow a defendant to plead guilty where there is no factual basis for the charge. *State v. Schminkey*, 597 N.W.2d 785, 788 (Iowa 1999). In determining whether there is a factual basis for a plea, the court may consider (1) statements by the defendant; (2) facts related by the prosecutor; (3) the presentence report,<sup>1</sup> or (4) the minutes of testimony. *State v.*

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<sup>1</sup> There was no presentence report in this case because defendant waived the right to a delay in sentencing.

*Ortiz*, 789 N.W.2d 761, 768 (Iowa 2010); *State v. Johnson*, 234 N.W.2d 878, 879 (Iowa 1974). The record must disclose facts sufficient to establish each element of the crime. *State v. Keene*, 630 N.W.2d 579, 581 (Iowa 2001).

The offense of identity theft is committed if a person “fraudulently uses or attempts to fraudulently use identification information of another person, with the intent to obtain credit, property, services, or other benefit.” Iowa Code § 715A.8(2); *State v. Garcia*, 788 N.W.2d 1, 2 (Iowa Ct. App. 2010). If the value of the credit, property, or services obtained exceeds \$1000, the person is guilty of a class “D” felony. *Id.* § 715A.8(3). However, if the value is \$1000 or less, the person commits an aggravated misdemeanor. *Id.* “The value of property or services is its highest value by any reasonable standard at the time the identity theft is committed.” *Id.* § 715A.9. The value of credit, property, or services obtained in a “single scheme, plan, or conspiracy . . . may be considered as a single identity theft and the value may be the total value of all credit, property, and services involved.” *Id.*

The minutes of testimony show two instances where defendant obtained property or services using the identity of Deutch. Defendant obtained medical services at Great River Medical Center in connection with her pregnancy with twins. Defendant also obtained wages as a result of her employment at West Liberty Foods from December 10, 2007, until May 9, 2008, using Deutch’s identity. Under section 702.14, the term “property,” means “anything of value,” and includes “both tangible and intangible property, labor, and services.”

We conclude there is a factual basis in the record to show defendant fraudulently used the identification information of Deutch to receive services and

property with a value that did not exceed \$1000.<sup>2</sup> We determine defendant has not shown she received ineffective assistance due to defense counsel's decision to permit her to plead guilty to identity theft.

**B.** Defendant contends she received ineffective assistance because defense counsel failed to alert her to the immigration consequences of her guilty plea. See *Padilla v. Kentucky*, 599 U.S. \_\_\_, \_\_\_, 130 S. Ct. 1473, 1486, 176 L. Ed. 2d 284, 299 (2010) (holding defense counsel must advise clients whether a guilty plea carries a risk of deportation). She asserts that as a result of her guilty plea she has been placed in deportation proceedings.

Ordinarily, we preserve claims of ineffective assistance of counsel for postconviction relief proceedings. *State v. Reyes*, 744 N.W.2d 95, 103 (Iowa 2008). There is no indication in the record on appeal whether defense counsel discussed immigration consequences with defendant. We conclude this issue must be preserved for possible postconviction proceedings.

We affirm defendant's conviction for identity theft.

**AFFIRMED.**

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<sup>2</sup> In *State v. Armstrong*, 787 N.W.2d 472, 476 (Iowa Ct. App. 2010), a defendant gave false identification information in order to avoid arrest, which the court found was an "other benefit" under section 715A.8(2). The Iowa Court of Appeals noted that section 715A.8(3) provided two different levels of offenses depending upon whether the value of credit, property, or services obtained exceeded \$1000 or not, and the statute made "no provision for the level of offense when the defendant allegedly obtains or attempts to obtain an 'other benefit.'" *Armstrong*, 787 N.W.2d at 476 n.2. We believe this concern is irrelevant to the present case because defendant obtained property and services, which come within the parameters of section 715A.8(3).