

IN THE COURT OF APPEALS OF IOWA

No. 2-028 / 11-0913
Filed February 15, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MATTHEW LEE HODGES,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, Mark Kruse,
District Associate Judge.

Defendant appeals following his guilty plea to serious domestic abuse
assault. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney
General, Patrick C. Jackson, County Attorney, and Jennifer S. Bailey, Assistant
County Attorney, for appellee.

Considered by Eisenhauer, C.J., Danilson, J., and Huitink, S.J.*

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

HUITINK, S.J.

Matthew Hodges was charged with serious domestic abuse assault. The State alleged Hodges assaulted his fiancée, Georgia Christofferson, by hitting the bottom of a glass from which she was drinking, and this caused the glass to hit her bottom lip and an upper tooth. The tooth pierced her bottom lip and broke off in her lip, causing her to need medical attention.

Hodges signed a written waiver of rights and plea of guilty to a charge of domestic abuse assault with injury, in violation of Iowa Code section 708.2A(2)(b) (2011). The written plea stated “I struck another without right, causing injury, that person being a domestic partner.” The court accepted the guilty plea. Hodges was sentenced to jail for ninety days, with all but ten days suspended. He was ordered to pay a fine and was placed on probation for twenty-four months.

Hodges now appeals, claiming he received ineffective assistance because his counsel permitted him to plead guilty to serious domestic abuse assault absent a factual basis. He claims there is not a sufficient factual basis to show he and Christofferson lived together or any evidence to make this a “domestic” assault.

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 he would have insisted on going to trial. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006).

A court may not accept a guilty plea without first determining whether the plea has a factual basis. *State v. Schminkey*, 597 N.W.2d 785, 788 (Iowa 1999). A defendant receives ineffective assistance if counsel permits the defendant to plead guilty where there is no factual basis for the charge. *Id.* There must be sufficient facts in the record to establish each element of the crime. *State v. Keene*, 630 N.W.2d 597, 581 (Iowa 2001). In determining whether there is a factual basis for a plea, we consider the entire record before the court, including the minutes of testimony. *State v. Hallock*, 765 N.W.2d 598, 603 (Iowa Ct. App. 2009).

Section 708.2A(1) provides that for the offense of domestic abuse assault, the term "domestic abuse," is defined in section 236.2. "Domestic abuse" is defined in section 236.2(2), and includes an assault "between family or household members who resided together at the time of the assault." See Iowa Code § 236.2(2)(a). It can also include assault between persons who are in an intimate relationship. *Id.* § 236.2(2)(e).

In his written guilty plea, Hodges characterized Christofferson as a "domestic partner." The term "domestic partner," is defined as one member of an unmarried cohabiting couple. Merriam-Webster's Collegiate Dictionary 371 (11th ed. 2006). Christofferson was Hodges's fiancée. The minutes of testimony contain a statement from an officer's report, "[Christofferson] said that after they got home they continued arguing" From this evidence we can infer that Hodges and Christofferson were household members who resided together.

We conclude there is a sufficient factual basis in the record for Hodges's guilty plea to domestic abuse assault. We conclude he has not shown he received ineffective assistance of counsel. We affirm his conviction.

AFFIRMED.