

IN THE COURT OF APPEALS OF IOWA

No. 2-934 / 12-0312
Filed December 12, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHARLES EARL HORTON,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, David F. Staudt, Judge.

The defendant appeals claiming he received ineffective assistance of counsel when counsel permitted him to plead guilty despite the lack of a factual basis to support the plea. **AFFIRMED.**

Patricia M. Hulting, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Thomas J. Ferguson, County Attorney, James Katcher, Assistant County Attorney, and Zak Hingst, Student Legal Intern, for appellee.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

VOGEL, J.

Charles Horton appeals his conviction following a guilty plea to three counts of second-degree burglary–habitual offender, in violation of Iowa Code sections 713.5(2) and 902.8 (2011), and one count of possession of a controlled substance, in violation of Iowa Code section 124.401(5). Horton asserts he received ineffective assistance of counsel because his attorney permitted him to plead guilty to the burglary charges when the record lacked a factual basis to support the plea. Having reviewing the record in this case, we affirm.

In *State v. Schminkey*, 597 N.W.2d 785, 788 (Iowa 1999), our supreme court held:

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. Therefore, our first and only inquiry is whether the record shows a factual basis for [the defendant's] guilty plea

In determining whether a factual basis supports a plea, “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.” *Schminkey*, 597 N.W.2d at 788.

In this case, Horton did not make any statement during the plea colloquy, but the court asked Horton whether he had read the trial information including the minutes of testimony and whether for the most part the report was true and accurate. Horton responded affirmatively. The court then asked if Horton had any objections to the court incorporating the minutes of testimony, along with the attached police reports and victims statements, into the record to establish the

factual basis for the plea. Horton had no objection to the court using this information to establish he committed the crimes.

We have reviewed the minutes of testimony in this case and are satisfied that it provides a factual basis to support each and every element of the burglary offenses Horton was convicted of. We therefore affirm Horton's conviction and sentence pursuant to Iowa Court Rule 21.29(a) and (e).

AFFIRMED.