

IN THE COURT OF APPEALS OF IOWA

No. 3-064 / 12-0964
Filed April 10, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHAD EDWARD BERRY,
Defendant-Appellant.

Appeal from the Iowa District Court for Jasper County, Martha L. Mertz,
Judge.

Chad Berry appeals following his guilty plea to eluding. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan Japuntich,
Assistant Appellate Defender, for appellant.

Chad Berry, Newton, pro se.

Thomas J. Miller, Attorney General, Bridget Chambers, Assistant Attorney
General, Michael K. Jacobsen, County Attorney, and Scott W. Nicholson,
Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

EISENHAUER, C.J.

Chad Berry appeals following his guilty plea to eluding, contending his attorney was ineffective in allowing him to enter a plea without a factual basis. We affirm.

In a six-count trial information, Berry was charged with two drug-related offenses, interference with official acts, eluding, second offender sentencing enhancement, and habitual offender sentencing enhancement. Pursuant to a plea agreement, he entered a written guilty plea to the interference and eluding charges. At the sentencing hearing, the court found him guilty of the offenses, both serious misdemeanors, imposed a jail sentence and a fine, and placed Berry on probation. The agreement also provided the court would dismiss the remaining four charges after about six weeks if all was going well.

Berry appeals, contending his trial attorney was ineffective in allowing him to enter a plea to eluding without a factual basis. In particular, Berry contends there was no evidence he was eluding or attempting to elude “a marked official law enforcement vehicle that is driven by a uniformed peace officer.” See Iowa Code § 321.279(2) (2009).

If an attorney allows a defendant to plead guilty when there is no factual basis, the attorney has failed to perform an essential duty, and prejudice is inherent. See *State v. Schminkey*, 597 N.W.2d 785, 788 (Iowa 1999). “The record on which we assess a showing of a factual basis may include statements by the defendant, minutes of [evidence], facts related by the prosecutor, and any presentence investigation report.” *State v. Myers*, 653 N.W.2d 574, 279 (Iowa 2002).

The minutes of evidence and Berry's written plea provide a factual basis for Berry's plea, including the elements of eluding he challenges. A deputy sheriff in his marked patrol car was behind Berry's vehicle and activated his emergency lights and siren. Berry admitted he attempted to flee from the officer.

Because there was a factual basis for the plea, Berry's attorney was not ineffective.

AFFIRMED.