

IN THE COURT OF APPEALS OF IOWA

No. 3-368 / 12-1337

Filed June 26, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANTAVIS MARICE WARDELL WATSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Patrick R. Grady (guilty plea) and Douglas S. Russell (sentence), Judges.

Watson appeals from the judgment and sentence entered following his guilty plea to first-degree theft. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Janet M. Lyness, County Attorney, and Kristin Parks, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

BOWER, J.

Antavis Marice Wardell Watson appeals from the judgment and sentence entered following his guilty plea to first-degree theft. He contends his trial counsel was ineffective in allowing him to plead guilty to a crime without a factual basis. Specifically, he argues there is an insufficient factual basis to show he took a vehicle with the intent to permanently deprive the owner. He also argues the record does not establish the value of the vehicle was more than \$10,000.

Because we find the record is sufficient to establish Watson took a vehicle valued at more than \$10,000 with the intent to permanently deprive the owner, a factual basis for Watson's guilty plea was established. Trial counsel was not ineffective for allowing Watson to enter a guilty plea or in failing to advise him to file a motion in arrest of judgment. Accordingly, we affirm.

I. Background Facts and Proceedings.

After perpetrating acts of domestic abuse on his girlfriend on July 14, 2011, Watson took a 2006 Ford Ranger pickup truck from a nearby business. The vehicle was reported stolen at 9:45 a.m. that morning. At 10 a.m., police officers located the vehicle parked outside a home in Coralville and "made contact" at the front door but were not let into the home. Officers entered the home to search for Watson after spotting him on a balcony. He was discovered in the trunk of a vehicle parked in the garage with the keys from the Ford Ranger in his pocket.

Watson was charged with first-degree theft as well as third-degree kidnapping, willful injury, domestic abuse assault with intent to cause serious

injury, domestic abuse assault, false imprisonment, and two counts of driving while barred. He entered into an agreement with the State to plead guilty to first-degree theft and domestic abuse assault with intent to cause serious injury in exchange for dismissal of the remaining charges.

The plea hearing was held on June 6, 2012. With respect to the theft charge, Watson admitted he took a motor vehicle that belonged to someone else without their permission. When asked if he intended to permanently deprive the owner of the vehicle, he answered, "Yes." The court then asked Watson if the value of the vehicle was at least \$10,000. Watson responded, "I don't know that. But I can only—." At that point, his attorney interrupted and said, "It was," and Watson amended his answer to: "Yes." The court then asked, "If that would be the testimony, that it's worth more than \$10,000, you have no reason to contest it, correct?" Watson replied, "Correct." Watson then pleaded guilty to first-degree theft. The district court accepted the plea.

The sentencing hearing was held on July 16, 2012. In his allocution, Watson stated in part, "I mean, I'm not going to sit here and say I didn't take the truck, but they got the truck back within ten minutes of reporting it stolen." The district court sentenced Watson to serve ten years in prison for first-degree theft and two years for domestic abuse assault with intent to cause serious injury. The sentences were ordered to be served concurrently.

II. Scope and Standard of Review.

A defendant who pleads guilty must raise any challenges to the guilty plea proceedings by a motion in arrest of judgment, and failure to do so precludes the

defendant from challenging the guilty plea on appeal. *State v. Martin*, 778 N.W.2d 201, 202-03 (Iowa Ct. App. 2009). However,

[w]hen a defendant's counsel does not challenge the entry of a guilty plea to an offense for which no factual basis is shown and a strong possibility exists that there was no factual basis, we have consistently held that this court may review the resulting challenge to the plea notwithstanding a failure to file a motion in arrest of judgment.

State v. Royer, 632 N.W.2d 905, 909 (Iowa 2001). Such challenges are typically allowed under an ineffective-assistance-of-counsel rubric. *Martin*, 778 N.W.2d at 203.

A defendant may raise an ineffective-assistance-of-counsel claim on direct appeal, although we ordinarily preserve such questions for postconviction relief proceedings so that counsel may have an opportunity to defend against the charge. *State v. Tate*, 710 N.W.2d 237, 240 (Iowa 2006). However, in those rare cases where the trial record alone is adequate, we will resolve the claim on direct appeal. *Id.*

While our review of a challenge to a guilty plea is for correction of errors at law, when a defendant's right to counsel is implicated our review is *de novo*. *Id.* at 239.

III. Analysis.

In order to succeed on an ineffective-assistance-of-counsel claim, a defendant must show by a preponderance of the evidence that "(1) counsel failed to perform an essential duty, and (2) prejudice resulted." *State v. Velez*, 829 N.W.2d 572, 576 (Iowa 2013). If defense counsel allows a defendant to plead guilty and waive the right to file a motion in arrest of judgment when there is no

factual basis to support the guilty plea, an essential duty has been breached and prejudice is presumed. *Id.*

In order to determine whether a factual basis exists to support a guilty plea, we look at “the minutes of testimony, statements made by the defendant and the prosecutor at the guilty plea proceeding, and the presentence investigation report.” *Id.* The record need not show the evidence supports a guilty conviction; rather, the record need only demonstrate the facts that support the offense. *Id.*

In determining if Watson’s trial counsel breached an essential duty, we must first decide whether a factual basis supports his guilty plea. *See id.* “A person commits first-degree theft when he ‘takes possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof.’” *Martin*, 778 N.W.2d at 204 (quoting Iowa Code § 714.4(1) (2011)). Watson challenges whether there is a sufficient basis for finding he intended to permanently deprive the truck’s owner of the vehicle.

Because proof that the defendant acted with the specific purpose of depriving the owner of his property requires a determination of what the defendant was thinking when an act was done, it is seldom capable of being established with direct evidence. Therefore, the facts and circumstances surrounding the act, as well as any reasonable inferences to be drawn from those facts and circumstances, may be relied upon to ascertain the defendant’s intent.

State v. Schminkey, 597 N.W.2d 785, 789 (Iowa 1999).

Although Watson admitted he had the intent to permanently deprive the truck’s owner of the vehicle during the plea colloquy, he argues a factual basis for his plea does not exist because, according to the minutes of testimony, he

initially denied stealing the truck, stating, "I just used it." He also argues his statement at the sentencing hearing that the truck's owner "got the truck within ten minutes of reporting it stolen" indicates he did not intend to permanently deprive the owner of the vehicle.

We find there is a sufficient factual basis in the record to support Watson's guilty plea. While he may have initially stated he "just used" the truck, Watson admitted to the court at the guilty plea hearing that he had the intent to permanently deprive the owner of the vehicle. Other evidence in the record indicates Watson intended to permanently deprive the owner of the vehicle: the minutes of testimony show that Watson drove the vehicle to a residence and hid from police officers when they arrived at the residence, locking himself in the trunk of another vehicle with the truck's keys in his pocket.

Watson points to his statement that the owner had the truck back within ten minutes of reporting it stolen, which he argues is proof he did not intend to permanently deprive the owner of the vehicle. However, this statement was made during the sentencing hearing, after the guilty plea had been accepted. To the extent this statement should have alerted counsel to the need to file a motion in arrest of judgment, there is no reasonable likelihood that it would have been granted. Assuming Watson's statement about the owner having the truck back a short period of time after it was reported stolen is accurate, it does not indicate how long Watson had been in possession of the truck. Nor is the length of time Watson was in possession of the truck dispositive of his intent to permanently deprive the owner. See *Martin*, 778 N.W.2d at 204. Because the record

demonstrates sufficient evidence by which the court could find the element of intent to permanently deprive the owner of the vehicle was established, Watson cannot show his counsel was ineffective in allowing him to plead guilty or in failing to challenge the plea on this basis.

Watson also challenges whether there is a factual basis for finding the vehicle had a value in excess of \$10,000. See Iowa Code § 714.2(1) (“The theft of property exceeding ten thousand dollars in value . . . is theft in the first degree.”). He argues that his admission of the value of the vehicle is insufficient to form a factual basis. And while Watson admits that “one of the complaints alleges the value to be over \$13,000,” he argues “the record is bereft of any evidence substantiating that amount.”

We find a sufficient factual basis establishes the value of the truck to be in excess of \$10,000. The minutes of testimony state that one of the police officers “will further testify that the blue book value of the stolen vehicle is over \$10,000.” Additionally, Watson stated at the plea hearing that he had no reason to contest such testimony. Because the uncontested evidence in the record establishes the vehicle’s value is over \$10,000, a factual basis exists for Watson’s plea, and accordingly, he cannot show counsel breached an essential duty in allowing him to plead guilty and in failing to file a motion in arrest of judgment. Accordingly, his ineffective-assistance-of-counsel claim fails.

AFFIRMED.