

IN THE COURT OF APPEALS OF IOWA

No. 3-449 / 12-1756
Filed June 26, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

WILLIAM HARDY CASTON JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler (plea), and Andrea J. Dryer (sentencing), Judges.

William Caston Jr. contends his trial counsel was ineffective in allowing him to plead guilty where the district court did not specifically articulate what evidence in the record supported his plea. **AFFIRMED.**

Mark C. Smith, Appellate Defender, and Bradley M. Bender, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brook Jacobsen, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

We ordinarily review challenges to guilty pleas for correction of errors at law. *State v. Ortiz*, 789 N.W.2d 761, 764 (Iowa 2010). But because Caston claims his guilty plea results from ineffective trial counsel, a claim with constitutional dimensions, our review is de novo. *Id.*

William Caston Jr. contends his trial counsel was ineffective in allowing him to plead guilty to introducing a controlled substance (marijuana) into a detention facility where the district court did not specifically articulate what evidence in the record supported his plea.

A court may not accept a guilty plea without first determining whether the plea has a factual basis. Iowa R. Crim. P. 2.8(2)(b); *State v. Schminkey*, 597 N.W.2d 785, 788 (Iowa 1999). There must be a showing that the facts support the crime but not necessarily a showing that the defendant is guilty. *State v. Keene*, 630 N.W.2d 579, 581 (Iowa 2001). The “record, as a whole, must disclose facts to satisfy the elements of the crime.” *Id.*

Caston claims his guilty plea results from ineffective trial counsel. To prove ineffective assistance, Caston must demonstrate by a preponderance of evidence that “(1) his trial counsel failed to perform an essential duty, and (2) this failure resulted in prejudice.” *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). “Defense counsel violates an essential duty when counsel permits defendant to plead guilty and waive his right to file a motion in arrest of judgment when there is no factual basis to support defendant’s guilty plea.” *Ortiz*, 789 N.W.2d at 764 (citing *State v. Philo*, 697 N.W.2d 481, 485 (Iowa 2005)). Where there is no factual basis, prejudice is presumed. *Schminkey*, 597 N.W.2d at 788.

The factual basis for a guilty plea must be disclosed in the record. *State v. Rodriguez*, 804 N.W.2d 844, 849 (Iowa 2011). A factual basis for a guilty plea may be found from: (1) inquiry of the defendant, (2) inquiry of the prosecutor, (3) examination of the presentence report, and (4) minutes of evidence. *Ortiz*, 789 N.W.2d at 768. Whatever the source of the factual basis, “the record must disclose the factual basis relied on.” *State v. Johnson*, 234 N.W.2d 878, 880 (Iowa 1975) (citing *State v. Williams*, 224 N.W.2d 17, 18–19 (Iowa 1974) (“It is essential, whatever sources used, that the factual basis be identified and disclosed in the record.”)).

Because Caston’s claim arises as an ineffective-assistance-of-counsel claim, he “must demonstrate the record lacks a factual basis to support his guilty plea.” *Ortiz*, 789 N.W.2d at 765. This he cannot do.

Here, Caston informed the court he wished to plead guilty to the charge of introducing marijuana into a detention facility.¹ He informed the court that he understood the elements the State would have to prove. In accepting the guilty plea, the district court referred to the minutes of testimony as the factual basis for the count alleging Caston brought a controlled substance (marijuana) into the Black Hawk County Jail. The minutes of testimony include Officer Isaac Jerome’s written narrative about Caston’s intake at the Black Hawk County Sheriff’s Office:

I was having [Caston] change out of his street clothes into a jail uniform. He removed all of his clothes and I did a visual inspection of his person. When I had him face away from me and bend over

¹ Caston was also pleading guilty to three or four unrelated charges as part of a plea agreement. He does not appeal the procedures for the acceptance of the guilty pleas in the other cases.

to have his anal area visually inspected I noticed a plastic baggie secreted between his butt cheeks.

The narrative continues noting Caston first stated the substance in the baggie was tobacco but then stated, "It's weed." The substance was analyzed and found to be marijuana.

Because the record contains a factual basis to support the plea, Caston has failed to prove counsel breached an essential duty when he permitted Caston to plead guilty to introducing a controlled substance (marijuana) into a detention facility. See *Ortiz*, 789 N.W.2d at 768. We therefore affirm.

AFFIRMED.