

IN THE COURT OF APPEALS OF IOWA

No. 3-589 / 12-2187
Filed August 21, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL RICHARD BROWN JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Carol L. Coppola,
District Associate Judge.

Michael Richard Brown Jr. appeals his conviction for eluding. **AFFIRMED.**

Michael B. Oliver of Oliver Law Firm, P.C., Windsor Heights, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney
General, John Sarcone, County Attorney, and Kevin Hathaway, Assistant County
Attorney, for appellee.

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

BOWER, J.

Michael Richard Brown Jr. appeals his conviction for eluding. Brown argues his attorney rendered ineffective assistance of counsel by allowing Brown to plead guilty to a crime without a factual basis. Because we find the record factually supported his conviction, we affirm.

I. Background Facts and Proceedings

On September 28, 2012, Officer Bjurstrom of the Des Moines Police Department observed Michael Richard Brown Jr. driving a vehicle with an inoperable center brake light. The officer activated his lights in order to initiate a traffic stop; however, Brown continued driving and completed two additional turns before finally bringing the vehicle to a stop. Brown was then taken into custody for eluding. The officer checked Brown's identity and also learned Brown was barred from driving as a habitual offender.

Brown entered a written guilty plea to driving while barred as a habitual offender, in violation of Iowa Code section 321.561 (2011), and eluding, in violation of Iowa Code section 321.279(1).¹ He was sentenced to 135 days in jail.

II. Standard of Review

Ineffective-assistance-of-counsel claims are reviewed de novo. *Lamasters v. State*, 821 N.W.2d 856, 862 (Iowa 2012). The claim is established by showing the attorney failed to perform an essential duty and prejudice resulted from the failure. *Id.* at 865.

¹ The conviction for eluding is the only issue raised in this appeal.

III. Discussion

Brown argues his counsel was ineffective for allowing him to plead guilty when the record did not provide a factual basis to support the plea. He contends the record fails to establish the officer was in uniform and in a marked vehicle, as required by law.

“It is axiomatic that a trial court may not accept a guilty plea without first determining that the plea has a factual basis.” *State v. Keene*, 630 N.W.2d 579, 581 (Iowa 2001); see also Iowa R. Crim. P. 2.8(2)(b). The record must disclose the factual basis for the plea. *Keene*, 630 N.W.2d at 581. When a plea is entered without a factual basis in the record, counsel is ineffective and prejudice is inherent. *State v. Ortiz*, 789 N.W.2d 761, 765 (Iowa 2010). The factual basis may be established by inquiry of the defendant or prosecutor, examination of a presentence report, or a review of the minutes of testimony. *Id.* at 768. In *State v. Philo*, 697 N.W.2d 481, 486 (Iowa 2005), our supreme court relied on the analogous federal rule to hold rule 2.8(2)(b) requires the court to specifically articulate, on the record, which sources were being relied upon to establish a factual basis for the plea.

Brown principally relies upon our decision in *State v. Amadeo*, No. 11-1426, 2012 WL 2122262 (Iowa Ct. App. June 13, 2012)² to support his arguments in this matter. In *Amadeo*, the defendant was charged with domestic abuse with intent to inflict serious injury and argued the record did not establish the element of intent or the existence of a domestic relationship. 2012 WL

² The opinion in *Amadeo*, despite having been considered en banc, is not binding upon us today.

2122262, at *1. The minutes of testimony addressed the missing facts; however, the district court relied exclusively upon an off-the-record discussion with the defendant in finding a factual basis for the plea. *Id.* at *3–4. Acknowledging the minutes of testimony can provide the factual basis for a plea, we vacated the sentencing because the record did not disclose the minutes were used as a method of forming part of the factual basis. *Id.*

In the present matter, the written guilty plea specifically states: “In order to establish a factual basis I ask the court to *adopt the minutes of testimony . . .*” (Emphasis added.) Though the sentencing order does not mention the minutes specifically, the plea itself asked to have the minutes included as the foundation for the factual basis. We find this reference is sufficient to incorporate the minutes for purposes of establishing a factual basis for the plea.

AFFIRMED.