

IN THE COURT OF APPEALS OF IOWA

No. 7-283 / 06-1177
Filed June 13, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT DANA WOODARD,
Defendant-Appellant.

Appeal from the Iowa District Court for Jones County, Marsha M. Beckelman, Judge.

Defendant appeals from the sentence entered following his guilty plea to five counts of forgery as an habitual offender. **AFFIRMED IN PART AND VACATED IN PART.**

Mark C. Smith, State Appellate Defender, and Shellie L. Knipfer, Assistant State Appellate Defender, for appellant.

Robert Dana Woodard, Anamosa, pro se.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, Connie S. Ricklefs, Jones County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Miller, J.J.

SACKETT, C.J.

Defendant-appellant, Robert Dana Woodard, pleaded guilty to five counts of forgery as an habitual offender in violation of Iowa Code section 715A.2(2)(a)(3) and section 902.8 (2005). Woodard appeals his sentence on several grounds. First, he argues that since he signed his own name on some of the checks, several of the forgery charges lack a factual basis for conviction. Second, the defendant claims that he was wrongly sentenced as an habitual offender for a fourth-degree theft charge. Woodard also claims that the court's sentence erroneously included a fine. We affirm in part and vacate the portion of the sentence that imposed a fine.

BACKGROUND. In June 2006, the State charged the defendant with five counts of forgery as an habitual offender and one count of fourth-degree theft for writing multiple unauthorized checks from his father's account. Under a plea agreement with the State, Woodard pleaded guilty to all five counts of forgery with the habitual offender sentencing enhancement. In exchange, the State dismissed the theft charge and agreed that four of the five forgery sentences would run concurrently. The State also agreed to suspend all fines for the forgeries if Woodard paid restitution. On June 20, 2006, Woodard pleaded guilty to the charges outlined in the agreement. The court sentenced the defendant immediately after the guilty plea, as the defendant requested. The court's sentence followed the suggested sentence in the agreement.

STANDARD OF REVIEW. When a defendant claims that there was no factual basis to support his conviction, we review the record for correction of errors at law. Iowa R. App. P. 6.4; *State v. Doggett*, 687 N.W.2d 97, 99 (Iowa

2004). Claims that the district court lacked authority to impose a specific sentence are also reviewed for errors at law. Iowa R. App. P. 6.4; *State v. Kapell*, 510 N.W.2d 878, 879 (Iowa 1994).

LACK OF FACTUAL BASIS. We first address the defendant's claim that three of the forgery charges lacked a factual basis. He claims that because he signed his own name on some of the checks, he never "transfer[red] a writing so that it *purports to be the act of another* who did not authorize that act." Iowa Code § 715A.2(1)(b) (emphasis added). The Iowa Supreme Court has held that "[w]hen a check is drawn on an existing bank account and signed by the drawer in his or her own name, the check is exactly what it purports to be." *State v. Phillips*, 569 N.W.2d 816, 820 (Iowa 1997). However, this claim can only be considered if error was preserved for appeal or the claim fits into an exception where preservation of error is not required. *State v. Allen*, 708 N.W.2d 361, 365 (Iowa 2006).

In order to preserve challenges to guilty pleas, including claims that the charge lacked factual basis, the defendant must file a motion in arrest of judgment. *Id.* at 364-65. "A defendant's failure to challenge the adequacy of a guilty plea proceeding by a motion in arrest of judgment shall preclude the defendant's right to assert such challenge on appeal." Iowa R. Crim. P. 2.24(3)(a). Woodard waived his right to file a motion in arrest of judgment and thereby his right to challenge the plea when he requested the court to sentence him directly after he pleaded guilty. The court advised him of these rights and the consequences of waiving them. Error was not preserved since a motion in arrest of judgment was not filed. The defendant also does not assert that the

failure to file a motion in arrest of judgment was caused by ineffective assistance of counsel, a circumstance that does not require the filing of a motion in arrest of judgment or error preservation. *Allen*, 708 N.W.2d at 364-65. We therefore must affirm his conviction.

THEFT CHARGE. The defendant argues that he was wrongly sentenced as an habitual offender for his fourth-degree theft charge. The theft charge was dismissed by the State, so he was not convicted of this charge. The habitual offender enhancement was applied to the forgery convictions, not theft. We find no error in the sentence regarding this claim.

IMPOSITION OF FINE. Defendant's last claim of error is that the district court lacked authority to impose a \$750 fine for each count of forgery. A fine can be imposed on habitual offenders when permitted by the applicable sentencing statute or permitted by another statute. *State v. Halterman*, 630 N.W.2d 611, 613-14 (Iowa Ct. App. 2001). Here, the defendant was sentenced under section 902.9(3), which states "[a]n habitual offender shall be confined for no more than fifteen years." Iowa Code § 902.9(3). This section does not provide for an habitual offender to be fined. Although another section permits a \$750 fine to be imposed for Class D felonies, such as forgeries, the section exempts habitual offenders. Iowa Code § 902.9(5). The forgery statute also does not list permissible penalties, such as fines. See Iowa Code § 715A.2. Since no statute expressly allows habitual offenders convicted of forgery to be fined, the court had no authority to order Woodard to pay \$750 for each count of forgery. The State concedes that this portion of the order must be vacated. We therefore vacate the

finer imposed by the district court and in all other respects affirm the district court.

AFFIRMED IN PART AND VACATED IN PART.