

IN THE COURT OF APPEALS OF IOWA

No. 7-545 / 06-1516
Filed August 22, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

THOMAS RICHARD MOFFITT,
Defendant-Appellant.

Appeal from the Iowa District Court for Cass County, Greg W. Steensland,
Judge.

The defendant appeals from his conviction for operating while intoxicated,
second offense. **AFFIRMED.**

Thomas Richard Moffitt, Oakdale, pro se.

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

Thomas J. Miller, Attorney General, Thomas Tauber, Assistant Attorney
General, and Daniel Feistner, County Attorney, for appellee State.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

BAKER, J.

Thomas Moffitt appeals from the judgment entered upon his guilty plea to the offense of operating while intoxicated, second offense. Iowa Code § 321J.2 (2005). Through appellate counsel, Moffitt generally contends his guilty plea counsel provided ineffective assistance in failing to assure that his plea was entered in compliance with Iowa Rule of Criminal Procedure 2.8(2). He has also filed a pro se brief in which he sets forth evidence that he apparently believes tends to prove his innocence.

The guilty plea proceedings were apparently not reported. Although Moffitt does not identify any specific defect in the plea proceedings, he asserts that because no record of the plea proceedings was made below, this court can presume prejudice because the breach of a “fundamental constitutional” right occurred. We conclude this claim cannot be adjudicated on the present record, and therefore preserve it for a possible postconviction relief application. See *State v. Straw*, 709 N.W.2d 128, 138 (Iowa 1999) (preserving an ineffective assistance claim and refusing to apply a rule of presumed prejudice to an allegedly deficient guilty plea).

We have also reviewed Moffitt’s pro se brief. It is unclear from the brief the nature of the alleged errors below or the relief sought. An appellant’s brief must “state the precise relief sought.” Iowa R. App. P. 6.14(1)(g). We further decline to address any issues presented in Moffitt’s pro se brief based on his failure to comply with the Iowa Rules of Appellate Procedure. See Iowa R. App. P. 6.14(1)(c) (“Failure in the brief . . . to cite authority in support of an issue may be deemed waiver of that issue.”); Iowa R. App. P. 6.14(1)(f) (requiring a party,

for each issue raised, to state how the issue was preserved for review and refer to portions of the record that reveal where the issue was raised and decided by the district court).

AFFIRMED.

Huitink, P.J., and Baker, J. concur. Vogel, J. dissenting.

VOGEL, J. (dissenting)

I would neither address nor preserve Moffitt's claims of ineffective assistance of counsel because he has not alerted us to any specific defect in the plea proceedings. *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994) (requiring mention of the specific ways in which counsel's performance was inadequate and refusing to preserve claims of a general nature).