

IN THE COURT OF APPEALS OF IOWA

No. 8-532 / 07-1976
Filed July 30, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

EVERETT MARCUS WEBB, JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge (guilty plea) and Gary D. McKenrick, Judge (sentencing).

A defendant appeals from his judgment and sentence for forgery, arguing he received ineffective assistance of counsel. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha Boesen, Assistant Attorney General, Michael J. Walton, Acting County Attorney, and Julie Walton and Robert Weinberg, Assistant County Attorneys, for appellee.

Considered by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

Everett Webb pled guilty to forgery. On appeal, he claims the record does not state a factual basis for the crime.

I. Background Facts and Proceedings

The State filed a trial information charging Webb with forgery by “fraudulently us[ing] a writing at Schnuck’s, to wit: a check on the Wells Fargo account of Chenhalls, pay to the order of Terry Johnson”¹ In contemporaneously filed minutes of testimony, the State revealed the following facts supporting the charge.

In 2007, Webb went to a grocery store and told the clerk that he wanted to cash a payroll check issued by an employment service agency and made payable to Terry Johnson. The clerk asked Webb for identification. Webb gave her an identification card and began endorsing the check. As he did so, the clerk noticed that Webb did not resemble the person on the picture ID he had given her. She also noticed that the check endorsement and the signature on the picture ID were different. The clerk asked for Webb’s date of birth. Webb said he was appalled at the request, asked to have the ID card and check returned, and left the store.

Webb was not known to the employment agency that issued the check. During 2007, the agency had experienced problems with counterfeit or fraudulent

¹ The State cited Iowa Code section 715A.2(2)(a), a provision that classifies the types of forgery but does not set forth the elements. This lack of specificity is not an issue on appeal.

checks purportedly issued by it. The agency had not issued a check to Terry Johnson since 1999.

At the plea hearing, the district court made the following record with a view to establishing a factual basis for the crime:

THE COURT: All right, could you tell me briefly what happened regarding the matter of the check on the 22nd day of July, 2007?

MR. WEBB: My friend gave me the check. I tried to cash it at the grocery store. It wasn't my check.

THE COURT: Did you sign the back of it or just try to cash it without signing it?

MR. WEBB: I did try signing it.

THE COURT: And was the check written on the account of [the employment service agency]?

MR. WEBB: Yes.

...

THE COURT: One more thing, did this happen in Scott County? In other words was it at the Schnuck's Store in Davenport or Bettendorf?

MR. WEBB: Yes, sir.

Based on this record and the minutes of testimony, the court found a factual basis for the plea. See Iowa R. Crim. P. 2.8(2)(b) ("the court . . . shall not accept a plea of guilty without first determining that the plea is made voluntarily and intelligently and has a factual basis."). Following imposition of sentence, Webb appealed.

II. Analysis

As a preliminary matter, we note that Webb did not preserve error on his claim that the record lacked a factual basis. Therefore, he raises the claim under an ineffective-assistance-of-counsel rubric.

To establish ineffective assistance of counsel, Webb must prove that counsel (1) failed to perform an essential duty, and (2) prejudice resulted.

Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). “We will find counsel failed to perform an essential duty if defense counsel allows the defendant to plead guilty to a charge for which no factual basis exists and it thereafter fails to file a motion in arrest of judgment challenging the plea.” *State v. Brooks*, 555 N.W.2d 446, 448 (Iowa 1996). “Prejudice in such a case is inherent.” *State v. Schminkey*, 597 N.W.2d 785, 788 (Iowa 1999). In determining whether a factual basis exists, we consider the entire record before the district court. *Brooks*, 555 N.W.2d at 448-49.

Webb contends the record is devoid of facts showing (1) he lacked the authority to cash the check, and (2) the check was fraudulent. The State counters that the facts disclosed above establish a factual basis for the forgery alternative contained in Iowa Code section 715A.2(1)(b).

That section states:

A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that the person is facilitating a fraud or injury to be perpetrated by anyone, the person does any of the following:

...

b. Makes, completes, executes, authenticates, issues, or transfers a writing so that it purports to be the act of another who did not authorize that act, or so that it purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or so that it purports to be a copy of an original when no such original existed.

Iowa Code § 715A.2(1)(b). We agree with the State that a factual basis to this alternative was established.

With respect to Webb’s authorization argument, we note that Webb signed a name that was not his to a check that was not issued to him. The check was issued by an employer for whom he had never worked and was presented eight

years after the employer issued its last check to Johnson. Based on this record, we have no trouble finding that Webb lacked the authority to cash the check. Turning to Webb's fraudulent check argument, we are not convinced the State had to establish that the check was fraudulent. If it did, the minutes of testimony reveal that the employment agency had been having a problem with counterfeit or fraudulently issued checks.

For these reasons, we affirm the district court's conclusion that the record contained a factual basis for the plea. Accordingly, defense counsel was not ineffective in failing to challenge the factual basis for the plea.

AFFIRMED.