

IN THE COURT OF APPEALS OF IOWA

No. 8-713 / 07-1730
Filed October 1, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL DEANGELO JEFFERSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,
Mary Howes, and Marlita A. Greve, Judges.

Michael Deangelo Jefferson appeals from judgment and sentence entered
following a guilty plea to third-degree sexual abuse. **CONVICTION AFFIRMED,
SENTENCE VACATED, AND REMANDED FOR RESENTENCING.**

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

Thomas J. Miller, Attorney General, Sharon Hall, Assistant Attorney
General, Michael J. Walton, County Attorney, Julia A. Walton and Kelly
Cunningham, Assistant County Attorneys, for appellee.

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

HUITINK, P.J.

Michael Deangelo Jefferson appeals from judgment and sentence entered following a guilty plea to third-degree sexual abuse. We affirm Jefferson's conviction, vacate his sentence, and remand for resentencing.

I. Background Facts and Proceedings.

Michael Jefferson was originally charged by trial information with the crime of sexual abuse in the second degree in violation of Iowa Code section 709.3 (2005). The trial information was subsequently amended by adding a charge of third-degree sexual abuse. Iowa Code § 709.4(2)(c)(4). The State claimed Jefferson engaged in a sexual relationship with a fourteen-year-old girl. The minutes of testimony reflect that Jefferson joined Arnold Grice and a fourteen-year-old female at a motel. Both had nonconsensual sexual contact with her. She was able to identify Grice in a photographic police line-up. Jefferson was implicated by admissions made to Grice's girlfriend and fingerprints lifted from a condom wrapper found in the motel room.

Jefferson entered a plea of guilty to count II, third-degree sexual abuse, pursuant to a plea agreement. Jefferson agreed to testify against his codefendant, Grice. In exchange for his plea, the State agreed to dismiss count I, file no other charges, and make no sentencing recommendation.

In a timely filed motion in arrest of judgment, Jefferson requested permission to withdraw his guilty plea. Although no evidence was presented at the hearing on Jefferson's motion, his attorney made a professional statement citing several reasons why Jefferson's guilty plea was invalid. Counsel related Jefferson's claims that

he pled guilty because he was threatened with a charge of kidnapping in the first degree, . . . he is innocent . . . and pled guilty because of the threat made by the prosecutor . . . the prosecutor will be dissatisfied with his testimony [against Grice] and will seek to further penalize him for that unfairly . . . he believes the court didn't inform him of the length of time he would have to be on the sexual offenders registry. . . .

The trial court rejected Jefferson's challenges to the validity of the plea and denied Jefferson's request to withdraw his guilty plea.

The record also includes an August 30, 2007 letter Jefferson wrote to Judge Alpers indicating he did not fully understand the terms of the plea agreement and counsel coerced him into accepting the plea agreement. He also requested appointment of a different attorney to represent him. On the same date, Jefferson filed a pro se "Motion to Dismiss Guilty Plea Due to Lack of Understanding, Due to Attorney Not Explaining." The record also contains Jefferson's September 11, 2007 letter to Judge Alpers requesting appointment of a different lawyer and restating his claims that counsel failed to explain or otherwise coerced him into accepting the plea agreement.

At a September 14, 2007 hearing, the court granted counsel's request to withdraw and appointed substitute counsel to represent Jefferson. On September 18, 2007, Jefferson's substitute counsel filed a motion in arrest of judgment requesting permission to withdraw Jefferson's guilty plea. The motion alleged that Jefferson continued to claim he was innocent, and that his former lawyer advised him to agree to the factual basis supporting count II even though it was false. On September 20, 2007, the trial court denied Jefferson's second motion in arrest of judgment because it was not timely filed. The trial court also

noted that even if timely filed, there was no merit to Jefferson's allegations concerning the factual basis for his plea.

After ruling on Jefferson's motion in arrest of judgment, the court proceeded to sentencing. In response to the court's inquiry, the assistant county attorney without objection told the court the State agreed with recommendations for incarceration contained in the presentence investigation. Prior to pronouncement of judgment and sentence, Jefferson addressed the court, citing a number of factors in mitigation of punishment. The court thereafter sentenced Jefferson to a term of incarceration as recommended in the presentence investigation report.

On October 2, 2007, counsel filed a notice of appeal from the judgment and sentence entered on September 20, 2007. On October 4, 2007, the court convened a hearing to supplement the judgment and sentence entered on September 20, 2007. In addition to the sentence originally imposed, the court added a special life sentence as required by Iowa Code section 903B.1.

Jefferson appeals and asserts multiple claims of ineffective assistance of counsel and that the court imposed an illegal sentence. Jefferson also filed a pro se supplemental brief in which he again raised the claims he previously made in his motions in arrest of judgment.

II. Guilty Plea.

As noted earlier, Jefferson timely filed a motion in arrest of judgment challenging the validity of his guilty plea and requesting permission to withdraw it. We review a trial court's decision to grant or deny a request to withdraw a guilty plea for an abuse of discretion. *State v. Blum*, 560 N.W.2d 7, 9 (Iowa 1997). We

will not find an abuse of discretion unless the defendant shows the court's discretion was exercised on grounds or for reasons that are clearly untenable or to an extent clearly unreasonable. *Id.*

Iowa Rule of Criminal Procedure 2.8(2)(b) provides that a guilty plea should not be accepted unless it is "made voluntarily and intelligently and has a factual basis." Also, "[f]undamental due process requires that a guilty plea be voluntary and intelligent." *State v. Sayre*, 566 N.W.2d 193, 195 (Iowa 1997). A court's refusal to allow a defendant to withdraw a guilty plea will be upheld where "a defendant, with full knowledge of the charge against him and of his rights and the consequences of a plea of guilty, enters such a plea understandably and without fear or persuasion." *Id.* (quoting *State v. Ramirez*, 400 N.W.2d 586, 588 (Iowa 1987)).

We read Jefferson's request to withdraw his guilty plea because he was innocent as a challenge to the factual basis supporting his plea. Contrary to Jefferson's claims, we agree with the State's assertion that the record as a whole includes facts satisfying the elements of third-degree sexual abuse. The minutes of testimony include the victim's statements that she had nonconsensual sexual contact with two men in a motel room. Moreover, Jefferson was implicated by his incriminating statements made to his codefendant's girlfriend, as well as fingerprint evidence referred to in the minutes of testimony.

Our review of the record also belies Jefferson's claims that his guilty plea was coerced by trial counsel or the State's threat to file more serious charges if he did not plead guilty. At best, the record indicates Jefferson reluctantly or unwillingly accepted counsel's advice to plead guilty to a lesser charge instead of

facing trial on more serious charges. His bald and unsubstantiated assertions to the contrary are insufficient to render his guilty plea involuntary. See *State v. Speed*, 573 N.W.2d 594, 597 (Iowa 1998); see also *State v. Longbine*, 263 N.W.2d 527, 528 (Iowa 1978) (fact that plea is induced by the possibility of more serious charges does not render plea involuntary).

We also reject Jefferson's claims concerning the court's failure to inform him of the duration of his registration as a sex offender. The sex offender registration is a collateral consequence of Jefferson's conviction. See *State v. Seering*, 701 N.W.2d 655, 667 (Iowa 2005). The court's failure to fully inform Jefferson concerning the duration of his sex offender registration accordingly does not implicate the validity of his plea. See *Mott v. State*, 407 N.W.2d 581, 583 (Iowa 1987).

We affirm on this issue.

III. Ineffective Assistance of Counsel

We review Jefferson's ineffective assistance of counsel claims de novo. *State v. Horness*, 600 N.W.2d 294, 297 (Iowa 1999). In order to prevail on a claim of ineffective assistance of counsel, the defendant must prove "(1) counsel failed to perform an essential duty; and (2) the failure resulted in prejudice." *State v. Westeen*, 591 N.W.2d 203, 207 (Iowa 1999).

The State concedes the county attorney's stated agreement with the sentence recommended in the presentence investigation report was a breach of the plea agreement. The State also concedes Jefferson was denied effective assistance of counsel because his attorney failed to object to the State's breach of the plea agreement, and the resulting prejudice requires us to vacate the

sentence imposed. See *Horness*, 600 N.W.2d at 298. (counsel has a duty to object to breach of plea agreement and failure to do so is prejudicial).

When the district court erroneously fails to remedy a prosecutor's breach of the plea agreement, we will "determine the appropriate remedy necessary to ensure the interests of justice are served—either by withdrawal of guilty plea or resentencing before another judge." *State v. Bearse*, 748 N.W.2d 211, 218 (Iowa 2008). In *Bearse*, the court elected to remand for resentencing because the "interests of justice are adequately served . . . by remanding for resentencing" and "there is no need to expend the added prosecutorial and judicial resources that would be required by vacating the conviction and allowing the process to start over anew." *Id.* We, for the same reasons, elect to vacate Jefferson's sentence and remand for resentencing in conformity with the plea agreement before another judge.

We find the record insufficient to address the remainder of Jefferson's ineffective assistance of counsel claims, and they are therefore preserved for postconviction proceedings. We have also carefully considered all of Jefferson's remaining claims on appeal and find they are either without merit or are controlled by the foregoing. We accordingly affirm Jefferson's conviction, vacate the sentence imposed, and remand for further proceedings in conformity with this opinion.

CONVICTION AFFIRMED, SENTENCE VACATED, AND REMANDED FOR RESENTENCING.