

IN THE COURT OF APPEALS OF IOWA

No. 9-021 / 08-0523
Filed March 11, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JIMMY ALLEN QUICK, JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott,
District Associate Judge.

Jimmy Quick appeals following his guilty plea, judgment, and sentence for
the charge of criminal mischief in the fourth degree. **JUDGMENT OF
CONVICTION AND SENTENCE VACATED AND REMANDED FOR
DISMISSAL.**

Jimmy Quick, Sioux City, pro se.

Mark C. Smith, State Appellate Defender, and Martha J. Lucey, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney
General, Steve Johnson, County Attorney, and Susan Wendel, Assistant County
Attorney, for appellee.

Considered by Sackett, C.J., and Potterfield and Mansfield, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

On June 29, 2007, Jasper County Deputy Scott Zach arrested Jimmy Allen Quick Jr. for operating while intoxicated. Zach handcuffed Quick, and while Zach was standing away from Quick, he observed Quick reaching for the front of his pants. He asked Quick what he was doing, and Quick replied that he was attempting to answer his cell phone, which was ringing. Zach told Quick not to answer the phone. This angered Quick, who yelled at Zach and called him “a few choice names.” Quick then began to struggle physically with Zach, causing both men to be pushed into Zach’s patrol car. Zach later observed that the physical struggle had caused a dent in his patrol car, which cost \$236 to repair.

The State charged Quick with criminal mischief in the fourth degree in violation of Iowa Code section 716.1 (2007). Quick filed a written guilty plea to the charge. The district court sentenced Quick to one year in jail with all but thirty days suspended and placed him on probation for one year. Quick now appeals, arguing his trial counsel provided ineffective assistance by allowing Quick to plead guilty to a charge without a factual basis.

II. Standard of Review

Because Quick’s claim involves a constitutional right, we review the totality of the circumstances de novo. *Taylor v. State*, 352 N.W.2d 683, 684 (Iowa 1984).

III. Ineffective Assistance of Counsel

In order to prove that his counsel was ineffective, Quick must show that: (1) his counsel failed to perform an essential duty; and (2) prejudice resulted from

that failure. *Id.* The district court may not accept a guilty plea without determining that the plea has a factual basis. *State v. Schminkey*, 597 N.W.2d 785, 788 (Iowa 1999). Where no factual basis for the charge exists, but counsel allows the defendant to plead guilty, counsel has failed to perform an essential duty. *Id.* In such a case, prejudice is inherent. *Id.*

The State contends that prejudice is not inherent in such a case, but must be proven as discussed in *State v. Straw*, 709 N.W.2d 128 (2006). In *Straw*, the Iowa Supreme Court found that in order to prove prejudice on an ineffective assistance claim based on the validity of a guilty plea, the appellant is required to show “that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Straw*, 709 N.W.2d at 136. *Straw* is distinguishable because Straw did not contend that he did not commit the crime. Rather, Straw argued that “*his decision* not to go to trial would have been different” if the court had informed him of the maximum possible punishment. *Id.* at 137 n.4. Prejudice is not presumed in such circumstances. *Id.* at 138. However, when trial counsel allows a defendant to plead guilty when no factual basis exists, prejudice is inherent. *Schminkey*, 597 N.W.2d at 788.

In determining whether a factual basis exists, we consider the entire record before the district court including the minutes of testimony, statements made by the defendant, and statements made by the prosecutor. *Id.* Criminal mischief is a specific intent crime, which requires proof that Quick intended not only the act that damaged the patrol car, but also intended to cause the resulting harm. *State v. Chang*, 587 N.W.2d 459, 461 (Iowa 1998). In determining

Quick's intent, we consider the facts and circumstances surrounding the act and any reasonable inferences that may be drawn from them. *Schminkey*, 597 N.W.2d at 789.

Nothing in the record before the district court would support an inference that Quick intended to damage the patrol car. In his written guilty plea, Quick agreed with the minutes of testimony and stated he caused a dent in a patrol car "without permission." The minutes of testimony refer to Zach's report which states that, "Quick began struggling with me and caused us to be pushed into the patrol car." At Quick's sentencing hearing, Quick's counsel stated that Quick "walks with a cane and has trouble moving around." Quick told the district court judge, "I didn't hit the vehicle or damage it on purpose." He described the incident as "just a weird thing that happened." The record shows no evidence that Quick intentionally damaged the patrol car. Rather, the record supports the inference that Quick's contact with the patrol car was an accident that resulted from a physical struggle involving a man who was handcuffed and had difficulty walking without a cane.

When a guilty plea has no factual basis, two remedies exist:

Where the record establishes that the defendant was charged with the wrong crime, we have vacated the judgment of conviction and sentence and remanded for dismissal of the charge. Where, however, it is possible that a factual basis could be shown, it is more appropriate merely to vacate the sentence and remand for further proceedings to give the State an opportunity to establish a factual basis.

Id. at 792. The record here demonstrates that the State had no evidence that Quick intended to harm the patrol car. Because the record is complete and affirmatively shows Quick's lack of intent, the State would be unable to show a

factual basis on remand for further proceedings. We therefore vacate the judgment of conviction and sentence and remand for dismissal of the charge.

**JUDGMENT OF CONVICTION AND SENTENCE VACATED AND
REMANDED FOR DISMISSAL.**