

IN THE COURT OF APPEALS OF IOWA

No. 9-1021 / 09-0954
Filed December 30, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRENDA LEE ROGERS,
Defendant-Appellant.

Appeal from the Iowa District Court for Henry County, Cynthia H. Danielson (guilty plea) and William J. Dowell (sentencing), Judges.

The defendant appeals from the judgment and sentence entered upon her conviction of forgery. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, and Darin Stater, County Attorney, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

HUITINK, P.J.

Brenda Lee Rogers appeals from the judgment and sentence entered upon her conviction of forgery. She contends the court erred in accepting her guilty plea because there was not a factual basis for it. We review her claim for the correction of errors at law. Iowa R. App. P. 6.907.

Rogers was arrested and charged with forgery after cashing two checks made out to her boyfriend, Jeremy Miller, on an account owned by his aunt and grandmother. Miller had made the checks out to himself and told Rogers to cash them, which she did. The checks were taken without the permission of the account holders.

Rogers contends there was no factual basis for accepting her guilty plea.¹ Before accepting a guilty plea, the district court must establish on the record a factual basis for the plea. *State v. Schminkey*, 597 N.W.2d 785, 788 (Iowa 1999). In deciding whether a factual basis exists, the court may consider the entire record, including any of the defendant's statements, facts related by the prosecutor, the presentence report, and the minutes of testimony. *Id.* Rogers claims there was no showing she intended to defraud anyone or that she knew

¹ Rogers failed to file a motion in arrest of judgment. While such motions are normally required before a plea may be challenged on appeal, the requirement does not apply if a defendant was improperly advised of the necessity of such a motion during the plea proceedings. *State v. Meron*, 675 N.W.2d 537, 540 (Iowa 2004). Rogers contends the district court failed to properly advise her filing a motion in arrest of judgment before challenging the plea on appeal. In the alternative, she contends her trial counsel was ineffective in allowing her to enter a plea without a factual basis. Because it is dispositive of both issues, we address the issue of whether a factual basis for the plea exists without making a determination as to whether Rogers was properly advised of the necessity of filing a motion in arrest of judgment.

the check given to her by her boyfriend was forged as required by Iowa Code section 715A.2 (2005).

At the guilty plea hearing, Rogers was asked to explain in her own words what she had done. She stated:

Jeremy told me that his aunt went to Iowa City for a heart attack and she told him to write out two checks, one for 60 and one for 600 for college, and told me to cash it and I did. I did. You know, he signed it. . . . I did not know that they had not given him permission.

However, when considering the entire record, there is a sufficient factual basis to support the guilty plea. The minutes of testimony include the following:

Lt. Ron Archer will . . . testify as to the results of his investigation into the theft and subsequent forgery of checks belonging to Mary Downey or Signa Brandmeyer Further, he will testify that Jeremy Miller and Brenda Rogers admitted to taking the checks and to writing the checks using the name of Mary Downey or Signa Brandmeyer, as payor, that they did not have permission to take the checks or to use them and further, that they received cash or merchandise in exchange for the checks.

Rogers acknowledged to the court that if a trial was held, the witnesses listed in the minutes would testify accordingly.

Because there was a sufficient factual basis for Rogers's plea, we affirm.

AFFIRMED.