FILED
FEB 26 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

403

STATE OF IOWA,)

Plaintiff-Appellee,) Filed February 26, 1985

vs.)

GROVER CLEVELAND FITZPATRICK,) 4-547
84-692

Defendant-Appellant.)

Appeal from the Iowa District Court for Linn County - John B. Siebenmann, Judge.

Defendant appeals from his conviction of second offense of operating a motor vehicle while intoxicated in violation of Iowa Code section 321.281. He asserts that his guilty plea was invalid since it did not fully comport with Iowa Rule of Criminal Procedure 8(2)(b). AFFIRMED.

Charles Harrington, Appellate Defender, and John P. Messina, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Pamela S. Greenman, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson and Snell, JJ.

PER CURIAM

Defendant appeals from his conviction of second offense of operating a motor vehicle while intoxicated in violation of Iowa Code section 321.281. On appeal, he asserts that his guilty plea was invalid since it did not fully comport with Iowa Rule of Criminal Procedure 8(2)(b) by the court's alleged failure to advise defendant of his privilege against self-incrimination and to inform the defendant of possible punishments for the crime.

A breath test administered after an accident indicated defendant's blood alcohol content to be .205 percent. Defendant was charged with second offense of operating a motor vehicle while intoxicated in violation of Iowa Code section 321.281. One count of the charge alleged operating a motor vehicle while under the influence and the other count alleged operating a motor vehicle while having thirteen hundredths of one percent blood alcohol or more. Defendant filed a waiver of rights guilty plea form and pled in court to a charge of operating a motor vehicle while under the influence. The charge of operating a motor vehicle while having thirteen hundredths of one percent blood alcohol or more was dismissed. The guilty plea form included a provision stating, "I further understand that if I had a trial, no one could force me to testify against myself; however, by pleading guilty, I give up that right." The form also included a provision stating, "I understand . . . the court could fine me up to $5,000, or could imprison me in the county jail not less than seven days which cannot be suspended or more than two years in the penitentiary or both."

At the guilty plea proceeding, the court asked the defendant whether he had discussed the contents of the guilty plea form with his attorney and whether he understood all of its provisions. The court then informed the defendant of his trial rights. The court, however, did not directly advise defendant that he had a privilege against self-incrimination, but instead stated "you have the right yourself not to testify throughout the trial." The court also did not address the

possible penalties that could be imposed on conviction. Instead, it asked whether defendant knew the minimum and maximum range of penalties that could be imposed for second offense of operating a motor vehicle while intoxicated and whether he understood that a subsequent offense could result in a felony conviction.

After defendant's plea, the court did not inform him that any challenge to the guilty plea must be raised through a motion in arrest of judgment. The defendant did not make such a motion. Defendant was sentenced to a term of up to two years.

Ordinarily, a defendant must challenge the adequacy of a guilty plea proceeding by a motion in arrest of judgment in the trial court or else be precluded from asserting such a challenge on appeal. Iowa R. Crim. P. 23(3)(a) (1983). In this case, no motion in arrest of judgment was filed. If the trial court fails to inform the defendant of the 23(3)(a) requirement, as required by Iowa R. Crim. P. 8(2)(d), the defendant will not be precluded from challenging the adequacy of the guilty plea proceedings because of a failure to file a motion in arrest of judgment. State v. Worley, 297 N.W.2d 368, 370 (Iowa 1980). Because the court failed to inform the defendant of the 23(3)(a) requirement, the defendant in this case may challenge the adequacy of the plea proceeding.

After reviewing the transcript of the guilty plea proceedings, we find that the trial court substantially complied with the requirements of Iowa Rule of Criminal Procedure 8(2)(b) which sets forth the guidelines which the trial court must follow before accepting a guilty plea. We find that the questions put to the defendant by the trial court before accepting the plea substantially complied with these requirements.

The conviction of the defendant is affirmed.

AFFIRMED.