IN THE COURT OF APPEALS OF IOWA

No. 1-307 / 00-1734
Filed June 13, 2001

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RANDY HOOD,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Karen A. Romano, District Associate Judge.

Randy Hood appeals from the judgment and sentence entered upon his guilty plea to assault with intent to inflict serious injury but with a bodily injury. **AFFIRMED.**

Ivy Ross Rivello of Parrish, Kruidenier, Moss, Dunn & Montgomery, L.L.P., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Darrel L. Mullins, Assistant Attorney General, John P. Sarcone, County Attorney, and Christina Gonzalez, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Mahan and Zimmer, JJ.

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STREIT, P.J.

Randy Hood pled guilty to assault causing bodily injury, a serious misdemeanor. Iowa Code § 708.2(2) (1999). On appeal, Hood claims we should set aside his guilty plea and remand for further proceedings for the following reasons: (1) the district court did not inquire into his understanding of the nature of the charge against him and (2) the court did not inform him of the penal consequences of his plea. *See* Iowa R. Crim. P. 8(2)(b).

Hood did not file a motion in arrest of judgment. Rule 23(3)(a) of the Iowa Rules of Criminal Procedure states, "A defendant's failure to challenge the adequacy of a guilty plea proceeding by motion in arrest of judgment shall preclude his or her right to assert such challenge on appeal." However, such preclusion does not apply if the court—as required by rule 8(2)(d)—has not informed the defendant about the necessity of filing the aforementioned motion and the consequences of his failure to do so. *See State v. Worley*, 297 N.W.2d 368, 370 (Iowa 1980).

Here, Hood entered a written guilty plea, requested immediate sentencing, and waived transcription of the proceedings. When a defendant is sentenced immediately after he enters a guilty plea, he loses the opportunity to file a motion in arrest of judgment. *See State v. Taylor*, 301 N.W.2d 692, 693 (Iowa 1981). Accordingly, if the court has complied with rule 8(2)(d), the defendant is precluded from challenging the adequacy of his plea proceeding on appeal. *See id.*

Because Hood waived transcription of his plea and sentencing proceedings, we cannot determine from the record whether the court complied with rule 8(2)(d). We do know, however, Hood made the following statement via his written guilty plea: "By seeking immediate sentencing, I am giving up my right to attack this guilty plea by filing a Motion in Arrest of Judgment under rule 23(3) of the Iowa Rules of Criminal Procedure." Such an acknowledgment is arguably sufficient to remedy the court's possible noncompliance with rule 8(2)(d). *But cf. State v. Hook*, 623 N.W.2d 865, 868 (Iowa 2001) (suggesting a defendant cannot waive via a written guilty plea the in-court colloquy required by rule 8(2)(d)). However, even if it is not, we will not excuse Hood's failure to file a motion in arrest of judgment. Hood is responsible for the lack of an adequate record from which we can determine whether the court complied with rule 8(2)(d). Specifically, he voluntarily waived transcription of his proceedings. Then, after deciding to appeal, he failed to make a record of these proceedings by either a supplemental statement of proceedings pursuant to Iowa Rule of Appellate Procedure 10(c) or by creating a bill of exceptions pursuant to Iowa Rule of Criminal Procedure 23.1. Given these circumstances, we will not overlook his failure to take the steps necessary to preserve error. *Cf. State v. Mudra*, 532 N.W.2d 765, 767 (Iowa 1995) ("It is a defendant's obligation to provide this court with a record affirmatively disclosing the error relied upon. We conclude that, by voluntarily failing to provide such a record, [the defendant] has waived error on his claim."). We affirm the district court.

AFFIRMED.

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