IN THE COURT OF APPEALS OF IOWA

No. 7-106 / 96-1101

STATE OF IOWA,

Plaintiff-Appellee,

vs.

JAY SHANNON BEAR,

Defendant-Appellant.

FILED
MAR 28 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Marshall County, Carl D. Baker and Carl E. Peterson, Judges.

Jay Bear appeals the judgment and sentence entered upon his conviction, following a guilty plea, of second-degree criminal mischief. **AFFIRMED.**

Allan M. Richards, Tama, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, James DeTaeye, County Attorney, and Paul G. Crawford, Assistant County Attorney, for appellee.

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

PER CURIAM

Jay Bear appeals his conviction for second-degree criminal mischief in violation of Iowa Code sections 716.1, 716.4, and 703.2 (1995). He claims the court should not have accepted his guilty plea. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

The State alleged Bear, along with two other men, had intentionally damaged ten vehicles by kicking out the windows. The State alleged the men had also damaged a pool cue. On May 13, 1996, Bear pled guilty to the charge of criminal mischief in the second degree. The district court accepted the guilty plea. Bear was sentenced to a term of imprisonment not to exceed five years and ordered to pay restitution.

Bear now appeals. He claims the district court should not have accepted his guilty plea because there was no factual basis for the plea. We first note Bear failed to file a motion in arrest of judgment. Under Iowa Rule of Criminal Procedure 23(3)(a), a defendant's failure to challenge the adequacy of a guilty plea proceeding by motion in arrest of judgment precludes his right to assert such challenge on appeal. *State v. Oldham*, 515 N.W.2d 44, 46 (Iowa 1994). Bear's failure to file a motion in arrest of judgment precludes him from challenging the guilty plea proceeding on appeal.

In addition, even if Bear's claims had been properly raised, we would find no error in the district court's acceptance of his guilty plea. Bear argues the court must

establish that he admitted the facts before a guilty plea could be accepted. At one point in the proceedings, Bear testified he doubted the State could prove he damaged the property. Thus, he claims the court could not have found the elements of the crime had been established in this case.

A full reading of the transcript of the guilty plea proceedings, however, shows Bear later admitted the State could prove he damaged property belonging to other persons, the damage was not accidental, and he had no right to inflict the damage. We find the district court properly found the elements of criminal mischief had been established.

We affirm defendant's conviction for the crime of mischief in the second degree. Costs of this appeal are assessed to Bear.

AFFIRMED.