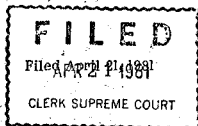


IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
)
Plaintiff-Appellee,)
)
vs.)
)
JOE LOUIS MARTINEZ, JR.,)
)
Defendant-Appellant.)

1-61
65053

Appeal from Pottawattamie District Court - Paul H. Sulhoff and Glen M. McGee,
Judges.

Defendant appeals his conviction and sentence entered upon his plea of guilty to robbery in the first degree in violation of section 711.2, The Code, alleging that the trial court did not inform him of his right to counsel should he choose to go to trial, there was no factual basis for his guilty plea, his trial attorney rendered ineffective assistance, and the court should have sentenced him to probation instead of imprisonment. AFFIRMED.

Marvin L. Vannier, Council Bluffs, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Roxann M. Ryan, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant appeals his conviction and sentence entered upon his plea of guilty to robbery in the first degree in violation of section 711.2, The Code. He claims that the trial court did not inform him of his right to counsel should he choose to go to trial, there was no factual basis for his guilty plea, his trial attorney rendered ineffective assistance, and the court should have sentenced him to probation instead of imprisonment. We affirm.

I. Regarding defendant's issues concerning the trial court's failure to inform him of his right to counsel at trial and failure to determine if there was a factual basis for the guilty plea, the State argues that defendant failed to preserve error on these issues by not filing a motion in arrest of judgment pursuant to Iowa R. Crim. P. 23(3)(a). We agree. That rule provides in part that "[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." The trial court, however, has the corresponding duty to inform the defendant that he or she must raise such challenges to guilty plea proceedings by a motion in arrest of judgment and that failure to do so precludes his or her right to challenge the proceedings on appeal. Iowa R. Crim. P. 8(2)(d). If the record does not show that the court so informed the defendant, a motion in arrest of judgment is not required to preserve error. State v. Smith, 300 N.W.2d 90, 91 (Iowa 1981); State v. Worley, 297 N.W.2d 368, 370 (Iowa 1980). In determining whether the trial court met the requirements of Rule 8(2)(d), we apply the standard of substantial compliance. State v. Taylor, 301 N.W.2d 692, 693 (Iowa 1981).

We have no trouble in concluding that the trial court substantially complied with Rule 8(2)(d). The record of the guilty plea proceeding discloses the following exchange:

THE COURT: * * *

Mr. Martinez, now you have the right under our statutes, that if you have any question about your — the plea and the court appearance at this time and the hearing at this time, if you have any question about that, you can file a motion in arrest of judgment. But in order to do so you must file that motion in the Clerk's Office at least five days before the date set for sentencing.

THE DEFENDANT: Five days before, right?

THE COURT: Yes. If that is not filed at that time, then the Court will assume that you have no question as to this hearing and that your plea is then final and that the only further thing for the Court to do on the 3rd day of March is to impose sentence. Anything further, gentlemen?

MR. WATTS: No, sir.

THE COURT: Thank you.

MR. WINTER: Your Honor, will the bond be continued?

THE COURT: Yes. (Whereupon, the guilty plea was concluded.) (emphasis added)

This record clearly indicates that the court informed defendant of the necessity of filing a motion in arrest of judgment within a certain period of time and, if he failed to do so, his guilty plea would be final. Because the court substantially complied with Rule 8(2)(d), defendant's failure to file a motion in arrest of judgment precludes our review of those issues involving the sufficiency of the plea.

II. Defendant also argues that he received ineffective assistance of counsel because of various acts and omissions of his attorney which allegedly misled him as to the relevant pleading and sentencing provisions of the new Iowa Criminal Code. We do not think that the record presented on this direct appeal is sufficient to determine the effectiveness of defendant's trial counsel. That issue was not presented and argued by either side during any of the proceedings below. See State v. Kellogg 263 N.W.2d 539, 544 (Iowa 1978). We therefore decline to determine this issue at this time. Defendant may, if he chooses, pursue this claim in postconviction proceedings under chapter 663A, The Code.

III. Finally, defendant claims that the trial court should have imposed probation instead of imprisonment. This argument ignores the plain language of our statutes. Robbery in the first degree is a forcible felony under section 702.11, The Code. As a result, one convicted of this offense is ineligible for deferred judgment, deferred or suspended sentence, or probation under section 907.3, The Code. The trial court had no choice except to sentence defendant to imprisonment for a term not to exceed twenty-five years under section 902.9(1), The Code. The court did so; we find no error. Because of the mandatory sentence involved in this case, we need not consider defendant's request that we apply the American Bar Association Standards of Appellate Review of Sentences.

AFFIRMED.