IN THE COURT OF APPEALS OF IOWA

No. 1-125 / 00-0911
Filed May 9, 2001

FILED
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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT LEE ROBINSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch (plea proceeding) and Stephen C. Clarke (sentencing), Judges.

Robert Lee Robinson appeals from the judgment and sentence entered upon his guilty plea to willful injury. **AFFIRMED.**

Michael J. Jacobsma of Klay, Veldhuizen, Bindner, De Jong & Pals, P.L.C., Orange City, for appellant.

Thomas J. Miller, Attorney General, Darrel L. Mullins, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Linda Myers, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Huitink and Streit, JJ.

STREIT, J.

Robert Robinson pled guilty to willful injury. *See* Iowa Code § 708.4(2) (Supp. 1999). On appeal, Robinson claims his plea was not voluntarily and intelligently made given the following purported errors committed by the district court at the plea proceeding: (1) the court did not tell him the State could not comment on his decision not to testify should the case proceed to trial; (2) the court induced his guilty plea by commenting on the State's evidence; (3) the court gave him incorrect information about filing a motion in arrest of judgment; and (4) the court did not tell him his sentence for willful injury could run consecutive to his potential sentence in an unrelated case.

Robison has not taken the steps typically necessary to preserve one's right to challenge the adequacy of a plea proceeding. 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." Robinson admits he never filed a motion in arrest of judgment.

Robinson argues his failure to file a motion in arrest of judgment should be excused because the court misinformed him about the applicable filing deadline. Rule 23(3)(b) states, "The motion must be made no later than forty-five days after plea of guilty, . . . but in any case not later than five days before the date set for pronouncing judgment." The court mistakenly told Robinson he only had thirty

days to file the motion even though his anticipated sentencing date was at least six weeks away.[1]

The court's error does not excuse Robinson's failure to file a motion in arrest of judgment. We will overlook such a failure if a court does not tell a defendant who is challenging the adequacy his plea proceeding "that he must raise challenges to the plea proceeding in a motion in arrest of judgment and that failure to do so precludes challenging the proceeding on appeal." *State v. Worley*, 297 N.W.2d 368, 370 (Iowa 1980); *see also* Iowa R. Crim. P. 8(2)(d). Here, however, the court adequately informed Robinson about these matters.[2] *See State v. Burden*, 445 N.W.2d 395, 397 (Iowa Ct. App. 1989); *State v. Cameron*, 440 N.W.2d 616, 616-17 (Iowa Ct. App. 1989). Robinson was thus aware he had to file a motion in arrest of judgment at some time. Nonetheless, he never filed such a motion. Moreover, at his sentencing hearing he did not

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[1] At the January 10, 2000, plea proceeding, the court told Robinson "[s]entencing will be set in about six weeks from today's date." Sentencing was initially set for March 20. It was then continued to May 5, and then continued again until May 19.

[2] The court's complete colloquy regarding the motion in arrest of judgment was as follows:

> You do have some further rights available to you. You have a right to file what's called a Motion in Arrest of Judgment. That's a legal procedure whereby you attack the taking of this guilty plea alleging I made certain errors during the course of the proceedings and asking that the plea be set aside and that you be allowed to proceed on the original charge without any agreement whatsoever.
>
> You would normally have 48—excuse me, 20—30—30 days from today's date to file that motion; and it would have to be filed not less than 5 days prior to the time set for sentencing. If you fail to file the motion within the statutory time frame, you would forever waive or give up the right to attack the plea in this case; and it would always stand.

object to the thirty-day deadline referred to by the court or to any of the court's other purported errors. Robison is precluded from challenging the adequacy of his plea proceeding on appeal. We affirm his conviction.

AFFIRMED.