

IN THE COURT OF APPEALS OF IOWA

No. 8-607 / 97-0070

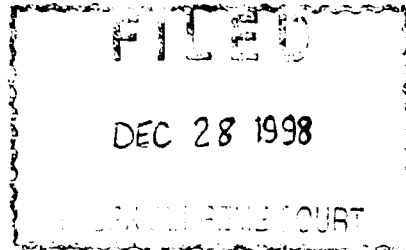
STATE OF IOWA,

Plaintiff-Appellee,

vs.

JOHN DEE HADSALL,

Defendant-Appellant.



Appeal from the Iowa District Court for Decatur County, Robert Rolfe, Magistrate, and Richard D. Morr, Judge.

Defendant appeals from the judgment and sentence entered upon his guilty plea to possession of marijuana in violation of Iowa Code section 124.401(3) (1995).

AFFIRMED.

John Hadsall, St. Petersburg, Florida, pro se.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, and Carol Clark, County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ.

MAHAN, J.

The defendant appeals the judgment and sentence entered upon his guilty plea to possession of marijuana in violation of Iowa Code section 124.401(3) (1995). He contends he should be allowed to withdraw his plea because it was procured by the false promise seized property would be returned to him. We affirm.

The State charged the defendant with possession of marijuana after a police officer found the drug in the defendant's possession when he stopped to assist the defendant on the highway. Following the defendant's arrest, the police confiscated a handgun the defendant stated was in the trunk of his car.

According to the defendant, the magistrate judge informed him at arraignment that if defendant pled guilty to the possession charge in district court that day, the magistrate would order the release of the handgun. The defendant entered a guilty plea to the charge, which was accepted by the district court. The defendant waived delayed sentencing and the court immediately imposed the minimum \$250 fine plus surcharge. The defendant claims the magistrate informed defendant a few days later he had been mistaken, and had no jurisdiction to order the release of the handgun.¹

On appeal, the defendant contends he should be allowed to withdraw his guilty plea because it was induced by the magistrate's erroneous promise his gun would be returned. The State responds the defendant waived his right to challenge the plea by

¹ Contrary to the defendant's assertions, the record is clear the magistrate knew on September 10, 1996, he did not have jurisdiction. Defendant pled on September 27, 1996. The record also indicates the defendant apparently did not appear at the September 10, 1996 hearing.

waiving his right to file a motion in arrest of judgment. The State also contends there is no evidence the defendant's plea was based on the alleged assertion by the magistrate.

Failure to move in arrest of judgment bars a direct appeal of a conviction. Iowa R. Crim. P. 23(3)(a). The defendant waived the right to file a motion in arrest of judgment by seeking and obtaining immediate sentencing. Therefore, the defendant cannot challenge his guilty plea now. *State v. Schoelerman*, 315 N.W.2d 67, 71 (Iowa 1982); *State v. Worley*, 297 N.W.2d 368, 370 (Iowa 1980). In addition, the defendant neither states, cites, nor argues any authority in support of his claim on appeal and we deem it waived. Iowa R. App. P. 14(a)(3).

AFFIRMED.