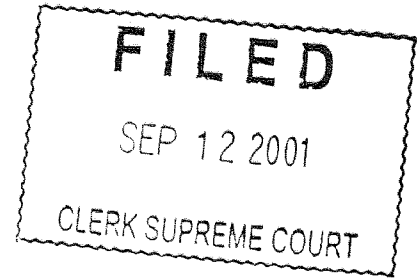


IN THE COURT OF APPEALS OF IOWA

No. 1-278 / 00-1108
Filed September 12, 2001



JULIUS T. ROHLFES,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Des Moines County, Cynthia Danielson, Judge.

Rohlfes appeals from the denial of his application for postconviction relief, arguing his trial counsel was ineffective and his guilty plea was the product of posttraumatic stress disorder and coercion. **AFFIRMED.**

Peter W. Hansen, Burlington, for appellant.

Thomas J. Miller, Attorney General, Darrel L. Mullins, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Amy Snook, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Huitink and Streit, JJ., but decided by Sackett, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

Julius Rohlfes appeals the denial of his petition for postconviction relief. We affirm.

1. Background Facts and Proceedings.

Rohlfes was originally charged with possession of a controlled substance with intent to deliver in violation of Iowa Code section 124.401(1)(b)(3) (1997). Rohlfes, pursuant to a plea agreement, pled guilty to possession of cocaine base with intent to deliver in violation of Iowa Code section 124.401(1)(c)(3). Rohlfes subsequently attempted to withdraw his guilty plea, claiming he was not aware of the court's full range of sentencing options. Rohlfes' motion was denied because it was not timely filed. Rohlfes was sentenced to an indefinite term of ten years.

Despite his resistance, Rohlfes' direct appeal was dismissed as frivolous pursuant to Iowa Rule of Appellate Procedure 104. Rohlfes' subsequent petition for postconviction relief, alleging that he was denied effective assistance of counsel and that his guilty plea was involuntary, was also denied.

In this appeal Rohlfes contends that the district court erred in finding trial counsel was not ineffective for failing to file a timely motion in arrest of judgment. He also challenges the following aspects of the court's decision concerning his guilty plea: (1) whether Rohlfes was required to show sufficient reasons why the grounds for relief asserted in his postconviction action were not previously asserted on direct appeal; (2) whether his failure to file a timely motion in arrest of judgment precluded challenges to his guilty plea; (3) whether the district court erred in finding that Rohlfes' motion in arrest of judgment was based entirely on his allegation he did not realize the potential consequences of his plea;

(4) whether the district court erred in finding that Rohlfes' involuntariness claim was based entirely on his posttraumatic stress syndrome; and (5) whether the court erred in finding Rohlfes failed to present medical evidence at trial to support his allegations that posttraumatic stress syndrome affected his guilty plea proceedings.

II. Standard of Review.

Ordinarily, our review of postconviction relief proceedings is for errors of law. *Hinkle v. State*, 290 N.W.2d 28, 30 (Iowa 1980). However, when a postconviction petitioner asserts violation of constitutional safeguards, we make our own evaluation based on the totality of the circumstances. This is the equivalent of de novo review. *Id.*

III. Ineffective Assistance of Counsel.

Rohlfes contends he was denied effective assistance of counsel by trial counsel's failure to file a timely motion in arrest of judgment. The defendant bears the burden of demonstrating ineffective assistance of counsel. *State v. Morgan*, 559 N.W.2d 603, 612 (Iowa 1997). A defendant receives ineffective assistance of counsel when (1) the defense attorney fails in an essential duty and (2) prejudice results. *State v. Bugely*, 562 N.W.2d 173, 178 (Iowa 1997). In order to meet the first test, one must overcome the strong presumption his attorney's actions were reasonable under the circumstances and fell within the normal range of competency. *State v. Shumpert*, 554 N.W.2d 250, 254 (Iowa 1996). To succeed on the second test, it must be shown that, but for counsel's error, the result of the proceedings would have been different. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994). Failure to move in arrest of judgment will not bar

a challenge to a guilty plea if this failure resulted from the ineffective assistance of counsel. *State v. Brooks*, 555 N.W.2d 446, 448 (Iowa 1996).

In finding that Rohlfes' trial counsel was not ineffective, the postconviction court noted:

Following the guilty plea by the Defendant and its acceptance by the Court sentencing was set for August 11, 1997 and the Defendant was advised by the Court of the need to file a Motion in Arrest of Judgment at least five days prior thereto in order to contest the validity of the plea. . . .

On July 25, 1997, the Department of Correctional Services requested a continuance of the sentencing and also requested a bench warrant issue for the Defendant because the Defendant could not be found and the presentence investigation could not be completed.

. . . .

Sentencing was set for August 11, 1997. Had the Defendant not disappeared necessitating a continuance to August 18, 1997, the deadline for filing a motion in arrest of judgment would have expired on August 6, 1997. The record is clear that the Defendant did not contact Mr. Hoth (Rohlfes' trial counsel) about filing the motion until August 12, 1997 after a bench warrant issued and the Defendant had been arrested on another, unrelated charge. Although Mr. Hoth could have and did not file the Motion at least five days prior to the second sentencing date this court believes that the time limit had already expired and the Defendant should not be allowed to now claim that he obtained additional time for filing due to his failure to make himself available to the court and the department of correctional services. . . .

The postconviction court's findings enjoy abundant support in the record and we adopt them as our own. Because Rohlfes has failed to prove either element of his ineffective assistance of counsel claim we find trial counsel was not ineffective. We affirm on this issue.

IV. Involuntariness of Guilty Plea.

We find that Rohlfes' involuntariness claims are controlled by the consequences of his failure to file a timely motion in arrest of judgment. Iowa

Rule of Criminal Procedure 23(3)(a) states that “[a] defendant’s failure to challenge the adequacy of a guilty plea proceedings by motion in arrest of judgment shall preclude his or her right to assert such challenge on appeal.” Rohlfs contends that this rule bars only direct appeals, not actions seeking postconviction relief. We disagree. Our supreme court has found that before an appellate court can reach the merits of a postconviction applicant’s assertions, the applicant must have established by a preponderance of the evidence sufficient reason for failing to properly file a motion in arrest of judgment in the trial court. See *Wenman v. State*, 327 N.W.2d 216, 217 (Iowa 1982). We have already determined that trial counsel is not responsible for the delay. Rohlfs asserts no other reasons for his failure to timely file the motion; thus he has not met his burden of proof. We find that Rohlfs’ failure to file a timely motion in arrest of judgment precludes his right to challenge the validity of his guilty plea in a postconviction action. See *Berryhill v. State*, 603 N.W.2d 243, 245 (Iowa 1999) (postconviction relief proceedings are not an alternative means for litigating issues not properly presented on direct appeal); *Wenman*, 327 N.W.2d at 218 (even issues of constitutional magnitude will not be addressed in a postconviction action if not first raised in trial court).

V. Summary.

We have carefully considered all issues raised on appeal and find they have no merit or are effectively resolved by the foregoing. The judgment of the postconviction court is affirmed in its entirety.

AFFIRMED.