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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed December 30, 1981

vs.)

SHELLY MARIE CLAY,) 1-398
65745

Defendant-Appellant.)

Appeal from Linn District Court - Harold J. Swailes and Robert E. Ford, Judges.

Defendant appeals from her conviction for possession of a controlled substance with intent to deliver as an accommodation in violation of section 204.410, The Code 1979, asserting that there was no factual basis for her guilty plea and that trial counsel was ineffective by allowing her to enter it and not filing a motion in arrest of judgment. AFFIRMED.

Jerald W. Kinnamon of Kinnamon, Kinnamon, Russo & Meyer, Cedar Rapids, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Thomas N. Martin, Assistant Attorney General, for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant, Shelly Marie Clay, appeals from her conviction for possession of a controlled substance with intent to deliver as an accommodation in violation of section 204.410, The Code 1979, asserting that there was no factual basis for her guilty plea and that trial counsel was ineffective by allowing her to enter the plea and not filing a motion in arrest of judgment. We affirm.

Defendant was charged by information with possession with intent to deliver, but later entered a guilty plea to a lesser accommodation charge. The original colloquy between trial court and defendant failed to establish the requisite intent and trial court refused to accept the plea and set a trial date. After a short recess, the second colloquy between trial court and defendant transpired wherein it was established that defendant possessed marijuana for herself, but would probably have sold some if asked, and that she had delivered marijuana to others in the past. Trial court then accepted her plea. Subsequently, a second judge gave defendant a suspended two year sentence and probation. One of the terms of the sentence required her to reside in a women's community correction center for six months. From this judgment and sentence, defendant appeals.

I. Scope of Review. Our review of an action at law is for correction of errors only. Iowa R. App. P. 4. Where a constitutional issue is raised, we make an independent evaluation of the totality of the circumstances surrounding the alleged violations. State v. Fisher, 279 N.W.2d 265, 266 (Iowa 1979).

II. Guilty Plea. Alleged defects in plea proceedings must be raised in a motion in arrest of judgment; failure to do so shall preclude the right to assert alleged error on appeal. Iowa R. Crim. P. 2(d). Defendant, having failed to raise this issue in a motion in arrest of judgment, is precluded from raising it on appeal.

III. Ineffective Assistance of Counsel. Defendant argues that her failure to raise errors in her plea proceeding was due to her counsel's ineffective assistance. The recognized standard for judging counsel's performance is whether, considering all the circumstances, that performance was within the range of normal competency. State v. Veverka, 271 N.W.2d 744, 750 (Iowa 1978). Defendant has the burden to establish counsel's ineffectiveness by a preponderance of the evidence. She also must develop an affirmative factual basis to demonstrate counsel's inadequacy. We conclude the record in this case is devoid of such a factual basis. Since we refuse to conclude that counsel's failure to file a motion in arrest of judgment is incompetent as a matter of law, we affirm defendant's conviction.

AFFIRMED.