

IN THE COURT OF APPEALS OF IOWA

No. 7-697 / 97-0470

000503

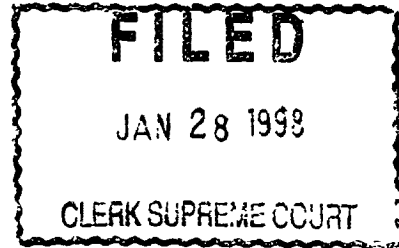
STATE OF IOWA,

Plaintiff-Appellee,

vs.

MARK ALLEN TRAMAN,

Defendant-Appellant.



Appeal from the Iowa District Court for Lee County, R. David Fahey and John C. Miller, Judges.

Mark Traman appeals from his conviction, following a guilty plea, for third-degree sexual abuse in violation of Iowa Code sections 709.1 and 709.4(2)(c)(4) (1995). **AFFIRMED.**

Kathleen M. Werner of Gary Hoyer Law Firm, P.L.C., Fort Madison, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, Michael Short, County Attorney, and David Andrusyk and Gordon Liles, Assistant County Attorneys, for appellee.

Considered by Sackett, P.J., and Huitink and Mahan, JJ.

PER CURIAM.

Defendant-appellant Mark Allen Traman appeals, challenging his competency to enter a guilty plea in accordance with a plea agreement. We affirm.

Pursuant to the plea agreement, on January 17 defendant pleaded guilty to third-degree sexual abuse. The State agreed to drop other charges pending against defendant. The court had concern about defendant's mental state while taking the plea and asked defendant if he understood what was happening. The court further described defendant's rights in considerable detail.

On January 18, defendant wrote a letter to the judge confirming he wanted the plea bargain so the other pending charges would be dismissed. On February 17, defendant through his attorney filed a motion in arrest of judgment, citing his inability to understand the proceeding and the consequences of his plea. However, defendant withdrew the motion at the beginning of the sentencing hearing on March 7. The district court sentenced defendant to a prison term not to exceed ten years.

On appeal, defendant first contends his plea was not entered knowingly or voluntarily because he was on three types of medication during the proceedings and did not comprehend what was happening. Defendant asserts the court failed to adequately question him concerning his medical conditions and improperly deferred to defense counsel's answers on the subject. Defendant claims he was in a daze during his guilty plea and sentencing hearings and he would not have pleaded guilty if he had understood the nature of the plea and its consequences. The State argues

defendant did not preserve this claim for appeal because he withdrew his motion in arrest of judgment before sentencing.

We normally review plea proceedings for correction of errors at law. Iowa R. App. P. 4. However, when as here a constitutional claim is raised, we make an independent evaluation of the circumstances shown by the entire record, which is a de novo review. *State v. Sayre*, 566 N.W.2d 193, 195 (Iowa 1997); *State v. Oldham*, 515 N.W.2d 44, 46 (Iowa 1994).

Challenges to guilty pleas must be raised by filing motions in arrest of judgment. Iowa R. Crim. P. 8(2)(d), 23(3)(a); *State v. Reaves*, 254 N.W.2d 488, 493 (Iowa 1977).

Due process requires a guilty plea to be voluntary and intelligent. *Sayre*, 566 N.W.2d at 193. Past cases detailing what was necessary to show that a plea was knowing and voluntary were, in effect, supplanted by Iowa Rule of Criminal Procedure 8(2)(b). *State v. Everett*, 372 N.W.2d 235, 236 (Iowa 1985). This rule states, in pertinent part:

Before accepting a plea of guilty, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

- (1) The nature of the charge to which the plea is offered.
- (2) The mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered.
- (3) That the defendant has the right to be tried by a jury, and at trial has the right to assistance of counsel, the right to confront and cross-examine witnesses against the defendant, the right not to be

compelled to incriminate oneself, and the right to present witnesses in the defendant's own behalf and to have compulsory process in securing their attendance.

(4) That if the defendant pleads guilty there will not be a further trial of any kind, so that by pleading guilty the defendant waives the right to a trial.

Iowa R. Crim. P. 8(2)(b).

Our review of the record of the dialog between the judge and defendant at the plea hearing reveals the judge went to great lengths to assure defendant was making the plea voluntarily and intelligently, that he understood the rights he was giving up by pleading guilty, he understood the elements the State would have to prove to support the charge, he knew the maximum punishment for the Class C felony, and there was a factual basis for the plea. The record is clear defendant understood the proceeding and what he was doing by pleading guilty. The judge complied with the requirements of Iowa Rule of Criminal Procedure 8 and of due process. *See State v. Fluhr*, 287 N.W.2d 857, 863 (Iowa 1980).

Finally, defendant argues his trial counsel was not effective because he failed to determine whether defendant's medications affected his ability to comprehend the proceedings and in advising defendant to withdraw his motion in arrest of judgment. The State responds defendant's own conduct belies his claim his defense counsel was not effective.

We review ineffective assistance of counsel claims by reviewing the totality of the circumstances, which is equivalent to a de novo review. *State v. Akright*, 506

N.W.2d 465, 467 (Iowa App. 1993). To prevail, defendant must show counsel failed to perform an essential duty and prejudice resulted. *State v. Howes*, 525 N.W.2d 874, 876 (Iowa App.1994). In alleging ineffective assistance, defendant must overcome the strong presumption counsel was competent. *State v. Ray*, 516 N.W.2d 863, 865 (Iowa 1994). A reviewing court can deny an application for postconviction relief based on the failure to prove prejudice, without deciding whether counsel's representation was deficient. See *State v. McKettrick*, 480 N.W.2d 52, 56 (Iowa 1992); *Taylor v. State*, 352 N.W.2d 683, 685 (Iowa 1984).

Defendant asserts his attorney was not effective in telling the judge at the plea hearing the medications defendant was taking did not prevent defendant from understanding what was happening. Based on our review of the record, as discussed above, we find this claim without merit. The judge did not rely on the statement of defendant's attorney, but examined defendant extensively until he was satisfied defendant understood.

Next, defendant claims his counsel was not effective in advising him to withdraw the motion in arrest of judgment at the beginning of the sentencing hearing. Because we already have addressed the merits of defendant's challenge to the plea proceeding, he cannot demonstrate prejudice from counsel's actions in withdrawing the motion in arrest of judgment.

AFFIRMED.