IN THE COURT OF APPEALS OF IOWA

No. 1-340 / 90-1183

FILED
OCT 29 1991
CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

557

JAMES EDWARD HARVILLE,

Appellant.

Appeal from the Iowa District Court for Mahaska County, Robert Bates and James P. Reilly, Judges.

Harville appeals his conviction and sentence, following a guilty plea, for possession of marijuana with intent to deliver. **AFFIRMED.**

Scott A. Sobel, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General, Amy M. Anderson, Assistant Attorney General, and Charles A. Stream, County Attorney, for appellee.

Considered by Schlegel, P.J., and Hayden and Sackett, JJ.

HAYDEN, J.

James Harville entered a plea of guilty to a charge of possession of marijuana with intent to deliver. The defendant challenges the trial court's acceptance of the guilty plea on several grounds.

Harville contends the district court erred by accepting his guilty plea without first holding a hearing pursuant to Iowa Code section 812.3 on his mental state and his competency to enter a guilty plea. Harville also asserts his guilty plea was involuntary because he was allegedly forced to choose between pleading guilty or going to trial with an attorney in whom he had no confidence. Harville additionally claims the trial court erred by deciding his motion in arrest of judgment without providing his new attorney a copy of the record of the guilty plea proceeding, thus denying him effective assistance of counsel and due process of law. Finally, Harville contends the sentencing court erred by failing to state on the record its reasons for choosing the particular sentence.

A motion in arrest of judgment was filed by defendant on June 6, 1990, which was overruled by the court on June 29. The motion stated:

> COMES NOW the defendant, by and through his attorney, Scott A. Sobel, and in support of this motion states to the court: 1) That the defendant has been charged in the above criminal case with the charge of Possession of a Schedule I controlled substance with the intent to deliver in violation of Section 204.401(1)(d) of the 1989 Code of Iowa. 2) That on May 14, 1990, the defendant entered a plea of guilty to the above charge and sentencing is set for June 8, 1990.

WHEREFORE, defendant prays that the court set this matter for hearing and upon hearing grant this motion.

Iowa Rule of Criminal Procedure 23(3) requires the filing of a motion in arrest of judgment in order to challenge on appeal any errors in the guilty plea proceedings. Our examination of the motion forces us to conclude the defendant failed to specify any deficiencies in his motion. In State v. Stennett, 220 Iowa 388, 395, 260 N.W. 732, 736 (1935), the supreme court stated in order for a motion in arrest of judgment to be considered, the motion must point out where the deficiency exists. Therefore, in failing to specify in his motion in arrest of judgment what errors occurred in the taking of the plea, defendant is ordinarily precluded from asserting any alleged errors on appeal. State v. Barbee, 370 N.W.2d 603, 605 (Iowa App. 1985).

Although defendant did not comply with the requirement in filing his motion, we will better conserve judicial resources by reaching the merits of Harville's claim and rendering a final disposition. We conclude the record does not disclose prejudicial error.

Harville's claim the trial court should have sua sponte ordered a competency hearing before accepting his guilty plea is without merit. After a careful review of the record, it does not appear Harville was suffering from a mental disorder which prevented him from appreciating the charge, understanding the proceedings, or assisting effectively in his defense. Iowa Code § 812.3 (1991).

Harville has not demonstrated on the basis of the whole record his plea was involuntary. The trial court strictly complied with Iowa Rule of Criminal Procedure 8(2)(b). "Strict compliance with the rule's literal language practically assures that a plea of guilty thereafter accepted is made voluntarily, intelligently, and with a factual basis." State v. Kirchoff, 452 N.W.2d 801, 804 (Iowa 1990).

Harville also claims the trial court denied him adequate representation of counsel and due process of law by not providing his new counsel with a copy of the record when his guilty plea was accepted prior to the hearing on the motion in arrest of judgment. We are unable to locate in the record where the defendant actually asked for the transcript to be made available to him. The defendant's attorney merely talked about the absence of the guilty plea transcript. This issue is therefore not preserved.

Finally, Harville maintains the trial court erred in failing to state on the record its reasons for selecting the particular sentence. The record reveals, however, the trial court considered various sentencing options. In addition, the court stated on the record its consideration of the nature and circumstances of the offense, Harville's prior criminal record, his chances of rehabilitation, and protection of the public when it selected the particular sentence. This is exactly what the court is required to do under Iowa Code section 901.5 and Iowa Rule of Criminal

Procedure 22(3)(d). Because the record indicates the sentencing court exercised its discretion, we will not interfere with the sentence unless the defendant shows "such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable." State v. Pappas, 337 N.W.2d 490, 493 (Iowa 1983). We conclude the trial court did not abuse its discretion in sentencing the defendant.

AFFIRMED.