IN THE COURT OF APPEALS OF IOWA

No. 0-582 / 99-817
Filed November 20, 2000

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LYNETTE EPPS,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick, Judge.

Lynette Epps appeals from the court's judgment and sentence entered following convictions for third-degree theft and assault causing bodily injury. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Stephan J. Japuntich, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kristin Mueller, Assistant Attorney General, William E. Davis, County Attorney, and Marc Gellerman and Alan Havercamp, Assistant County Attorneys, for appellee.

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

HUITINK, J.

I. Background Facts and Proceedings.

On April 8, 1999, Lynette Epps pled guilty to theft in the third degree and assault causing bodily injury. The court accepted Epps's plea after a colloquy with her in open court. There was no mention of the court's authority to impose consecutive sentences in either this colloquy or Epps's written guilty plea.

At the sentencing proceeding that followed, the court sentenced Epps to consecutive, indeterminate terms of two and one years respectively. Neither the court's oral pronouncement of sentence nor its written judgment entry mentioned credit for time served.

On appeal Epps contends her trial counsel was ineffective for failing to file a motion in arrest of judgment following the court's failure to advise Epps of the possibility of receiving consecutive sentences, or in the alternative, the court erred in failing to advise Epps of this possibility. Also she argues that the district court erred in failing to include an accounting of Epps's credit for time served in the sentencing order.

II. Ineffective Assistance of Counsel.

Epps's failure to move in arrest of judgment bars a direct appeal on her conviction. Iowa R. Crim. P. 23(3)(a). Nevertheless, this failure will not bar a challenge to a guilty plea if the failure to file a motion in arrest of judgment resulted from the ineffective assistance of counsel. *State v. Carter*, 582 N.W.2d 164, 165 (Iowa 1998).

We review claims of ineffective assistance of counsel de novo. *State v. Allison*, 576 N.W.2d 371, 373 (Iowa 1998). Ordinarily, we preserve claims of ineffective assistance of counsel raised on direct appeal for postconviction proceedings to allow full development of the facts surrounding counsel's conduct. *State v. Atley*, 564 N.W.2d 817, 833 (Iowa 1997). However, we will resolve ineffective assistance of counsel claims on direct appeal when the record is adequate to decide the issue. *State v. Arne*, 579 N.W.2d 326, 329 (Iowa 1998).

To succeed on an ineffective assistance of counsel claim, Epps must show (1) the defense attorney failed in an essential duty and (2) prejudice resulted. *State v. Bugely*, 562 N.W.2d 173, 178 (Iowa 1997). In the absence of evidence regarding Epps's intentions at the time of the plea proceedings or the advice given to her by counsel, we find the record is insufficient to resolve either component. *See State v. White*, 587 N.W.2d 240, 243 (Iowa 1998) (acknowledging that whether a defendant was aware of the possibility of consecutive sentences may be determined by examining the whole record). We accordingly preserve this issue for postconviction relief.

III. Credit for Time Served.

Our review is for correction of errors at law. Iowa R. App. P. 4; *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). A sentence imposed by the trial court will be overturned only for an abuse of discretion. *Thomas*, 547 N.W.2d at 225.

Epps claims the "district court erred by failing to include an accounting of defendant's credit for time served in the sentencing order." This argument is premised on the following code sections:

> [I]f an inmate was confined to a county jail or other correctional or mental facility at any time prior to sentencing, or after sentencing but prior to the case having been decided on appeal, because of the failure to furnish bail or because of being charged with a nonbailable offense, the inmate shall be given credit for the days already served upon the term of the sentence.

Iowa Code § 903A.5 (1999).

> In every case in which judgment is entered, the court shall include in the judgment entry the number of the particular section of the Code and the name of the particular section of the Code and the name of the offense under which the defendant is sentenced and *a statement of the days credited pursuant to section 903A.5 shall be incorporated into the sentence.*

Iowa Code § 901.6 (1999) (emphasis added). Epps reads section 901.6 to mandate the sentencing court include the amount of credit for time served in its order.

We find it sufficient to note this issue was decided by the recent Iowa Supreme Court decision of *State v. Hawk,* ___ N.W.2d ___ (Iowa 2000) (rejecting the defendant's "contention that the trial court must, at sentencing or as part of a written judgment entry, announce the credit to which the defendant is entitled for time served"). We accordingly affirm the district court decision on this issue.

AFFIRMED.