IN THE COURT OF APPEALS OF IOWA

No. 0-769 / 98-1888
Filed February 7, 2001

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STATE OF IOWA,
Plaintiff-Appellee,

vs.

DENNIS LEE ELLIS,
Defendant-Appellant.

Appeal from the Iowa District Court for Plymouth County, Robert J. Dull, Judge.

Dennis Ellis appeals the district court's order denying his motion for leave to withdraw his guilty plea. He contends the court erred when it denied him the right to withdraw his guilty plea because the court did not comply with the Iowa Rules of Criminal Procedure in accepting his guilty plea and sentencing him. **AFFIRMED.**

Dennis L. Ellis, pro se.

Thomas J. Miller, Attorney General, Richard Bennett, Assistant Attorney General, Darin J. Raymond, County Attorney, and Amy K. Oetken, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

SACKETT, C.J.

Defendant-Appellant, Dennis L. Ellis, was convicted following a September 15, 1998 guilty plea of operating while intoxicated, second offense in violation of Iowa Code section 321J.2 and carrying a concealed weapon in violation of Iowa Code section 724.4. Defendant appeals contending he should be allowed to withdraw his guilty plea. Defendant alleges: (1) police failed to properly administer the *Miranda* warning; (2) a search of his wallet by the ambulance crew in the presence of the police violated the Fourth Amendment; (3) his attorney was ineffective in failing to advise him of the consequences of his plea; and (4) he is not guilty of the crimes to which he pleaded guilty. We affirm.

Defendant in pleading guilty signed a waiver of rights and guilty plea outlining the charges to which he was pleading and the maximum and minimum penalties of those offenses. The Waiver of Rights further waived defendant's right to file a Motion in Arrest of Judgment. On September 15, 1995, defendant with his attorney appeared in court. Defendant's guilty plea was entered and he was sentenced.

On September 17th, 1998 defendant filed a motion for leave to withdraw plea contending after further consideration he believed the facts did not support a finding he was guilty of operating while intoxicated, second offense. The district court denied defendant's motion and held his plea of guilty and waiver of rights was made with the assistance of legal counsel and had no alleged defect.

We review a trial court's decision to grant or deny a request to withdraw a guilty plea for abuse of discretion. *State v. Speed*, 573 N.W.2d 594, 596 (Iowa 1998). Abuse of discretion exists only where a defendant shows the trial court's

sound discretion was "exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Id.*; *State v. Blum*, 560 N.W.2d 7, 9 (Iowa 1997) (determining whether a plea was entered into voluntarily). The refusal to allow withdrawal will be upheld "where 'a defendant, with full knowledge of the charge against him and of his rights and the consequences of a plea of guilty, enters such a plea understandably and without fear or persuasion.' " *Speed*, 573 N.W.2d at 596; *State v. Ramirez*, 400 N.W.2d 586, 588 (Iowa 1987) (quoting *State v. Weckman*, 180 N.W.2d 434, 436 (Iowa 1970)).

The trial court did not abuse its discretion in refusing to allow the defendant to withdraw his guilty plea. Counsel represented defendant when he signed a waiver of rights and entered a plea of guilty. Included in the waiver of rights was a provision waiving his right to file a motion in arrest of judgment.

Defendant also contends certain statements made to the police and evidence obtained from the search of his wallet should have been suppressed. Defendant also asserts he is not guilty of the crimes to which he pleaded guilty.

With limited exceptions, not pertinent here, a guilty plea taken in conformity with Iowa Rule of Criminal Procedure 8(2)(b) waives all defenses and objections. *State v. Yodprasit*, 564 N.W.2d 383, 387 (Iowa 1997); *State v. Worley*, 297 N.W.2d 368, 370 (Iowa 1980). A defendant seeking to challenge a guilty plea must do so by motion in arrest of judgment. *Worley*, 297 N.W.2d at 370. Failure to do so precludes the right to assert the challenge on appeal. *Id.*; Iowa R.Crim. P. 23(3)(a). Defendant waived his right to file a motion in arrest of judgment in his wavier of rights and guilty plea, therefore he is precluded from challenging his guilty plea on appeal.

Defendant also contends counsel was ineffective in failing to advise him of the consequences of his plea. Specifically, defendant contends he will lose his citizenship right to own or bear firearms because of his guilty plea.

To establish his claim of ineffective assistance of counsel, defendant must prove by a preponderance of the evidence that his trial counsel failed to perform an essential duty and that this failure resulted in prejudice. *State v. Gant*, 597 N.W.2d 501, 504 (Iowa 1999). To show counsel was ineffective in a guilty plea case, the defendant "must show that counsel's advice was not within the normal range of competency demanded of attorneys in criminal cases." *State v. Carney*, 584 N.W.2d 907, 910 (Iowa 1998). When the ineffectiveness claim is based on alleged failure to advise a defendant of the consequences of a guilty plea, the rule is that, if the consequences flow "directly" from the plea, the plea may be held invalid. *Mott v. State*, 407 N.W.2d 581, 582 (Iowa 1987). If, on the other hand, the fallout from the plea is "collateral," counsel is generally not held to be ineffective for failing to inform the defendant about it. *Id.* at 582-83. Assuming without deciding the defendant's loss of firearm rights are a consequence of his guilty plea, we hold this consequence is merely collateral. *See Saadiq v. State*, 387 N.W.2d 315, 325 (Iowa 1986) (holding prohibition against possessing a firearm was a collateral consequence of defendant's third-degree theft conviction and the trial court, in accepting guilty plea, was not required to inform defendant that he would be prohibited from carrying firearm).

The decision of the district court denying defendant's request to withdraw his guilty plea is affirmed.

AFFIRMED.