IN THE COURT OF APPEALS OF IOWA

No. 9-314 / 98-0417
Filed September 29, 1999

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CLINT THOMAS BENNETT,
Defendant-Appellant.

Appeal from the Iowa District Court for Clinton County, Arlen J. Van Zee, District Associate Judge.

Clint Bennett appeals his conviction of indecent contact with a child. **AFFIRMED.**

James Bryson Clements, Davenport, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Lawrence H. Schultz, County Attorney, and Gary Strausser, Assistant County Attorney, for appellee.

Heard by Streit, P.J., and Vogel and Zimmer, JJ.

VOGEL, J.

Clint Bennett appeals his conviction of indecent contact with a child. Bennett challenges the adequacy of his guilty plea and raises several claims of ineffective assistance of counsel. Due to his failure to file a motion in arrest of judgment, we find Bennett has waived the right to challenge his plea on appeal. We preserve some of his claims of ineffective assistance for postconviction proceedings and find the remainder to be too general to allow us to address the allegations or preserve them for postconviction relief. We affirm.

Background facts. Based on an incident occurring between Bennett and a twelve-year-old girl in the spring of 1996, the State charged Bennett with indecent contact with a child in violation of Iowa Code sections 709.12(1) and 709.12(2) (1995). Bennett entered a written plea of guilty on October 3, 1997. On January 8, 1998, Bennett was sentenced to a two-year term of incarceration and fined $200. Bennett's motion to reconsider the sentence was overruled. He now appeals.

I. Guilty plea. Bennett claims that the court erred in accepting his plea without first ascertaining that he was competent to enter a plea, or that he understood the rights he was giving up and the nature and penalties of the offense. The State argues that Bennett is precluded from asserting these claims on appeal because he failed to preserve error by filing a motion in arrest of judgment.

Generally, a defendant's failure to challenge the adequacy of a guilty plea proceeding by motion in arrest of judgment shall preclude his or her right to assert

such challenge on appeal. *See* Iowa R. Crim. P. 23(3)(a). However, failure by the court to substantially comply with the requirements of I. R. Crim. P. 8(2)(d) can reinstate a defendant's right to appeal his or her plea. *See, e.g., State v. Oldham*, 515 N.W.2d 44, 46 (Iowa 1994); *State v. Kirchoff*, 452 N.W.2d 801, 803 (Iowa 1990); *State v. Glenn*, 505 N.W.2d 818, 819 (Iowa App. 1993).

I. R. Crim. P. 8(2)(d) provides that:

> The *court* shall inform the defendant that any challenges to a plea of guilty based on alleged defects in the plea proceedings must be raised in a motion in arrest of judgment and that failure to so raise such challenges shall preclude the right to assert them on appeal.

(Emphasis added).

Bennett asserts that rule 8(2)(d) was not satisfied in part because the *court* did not inform him of his right to file a motion in arrest of judgment and the consequences for failing to do so. However, we do not subscribe to such a narrow reading of the rule. *Cf. State v. Yarborough*, 536 N.W.2d 493, 495-96 (Iowa App. 1995) (holding that rule 8(2)(b) does not require the court to address a defendant in open court in order to satisfy itself that the rule's requirements have been met where the written plea confirms each requirement). There was no in-court colloquy in this case because Bennett did not appear at the plea proceeding. Therefore, we turn to his written plea to ascertain if the requirements of the rule have been met.

The plea contained the following language:

> I further state that my attorney has advised me and I fully understand that any challenges to my plea of guilty, based upon defects in the plea proceedings, must be raised by a motion in arrest of

> judgment and that a failure to do so raise such challenge in such a motion will preclude my right to assert them on appeal. My attorney has explained to me the meaning and purpose of a motion in arrest of judgment, and I do state that I fully understand the same. I further understand that such motion must be made not later than 45 days after this plea of guilty, but no later than 5 days before the day of sentencing.

In *State v. Patten*, 553 N.W.2d 336, 337 (Iowa App. 1996), this court suggested, without deciding, that a mere reference to a defendant's I. R. Crim. P. 23(3)(a) rights in a written plea would be sufficient to satisfy the requirements of rule 8(2)(d). However, because of the importance of having defendants fully informed before making a voluntary plea and giving up both statutory and constitutional rights, those rights being waived must be clearly delineated either in a written plea or by the court. We therefore conclude that a mere reference to rule 23(3)(a) would be insufficient to satisfy the requirements of rule 8(2)(d). At a minimum, we believe that rule 8(2)(d) requires that a defendant be clearly informed of his right to file a motion in arrest of judgment, and that a failure to file a motion in arrest of judgment waives a later challenge to the plea. *Accord Oldham*, 515 N.W.2d at 46 (although in-court colloquy alone insufficient, written plea informing defendant that he must file a motion in arrest of judgment if he wished to attack the validity of his plea was sufficient to satisfy 8(2)(d)); *Kirchoff*, 452 N.W.2d at 803 (court's statement that defendant was waiving his right to file a motion in arrest of judgment by seeking immediate sentencing was not sufficient to satisfy rule 8(2)(d) requirements); *State v. Worley*, 297 N.W.2d 368, 370 (Iowa 1980) (8(2)(d) not satisfied where defendant was not informed that he could not challenge his plea on appeal if he failed to move

in arrest of judgment). We find Bennett's written plea in and of itself substantially complied with the rule.

Notwithstanding the language of the plea, Bennett contends that his attorney did not discuss a motion in arrest of judgment with him, nor the consequences for failing to file one. However, when a defendant enters a written guilty plea and does not appear in court to modify the plea, then the defendant's signature on the plea form must be taken as an affirmation of each and every statement contained within the form. Bennett's claims, which are outside of the plea record, may be addressed at postconviction proceedings. However, until such proceedings have been fully litigated, the plea stands in the form accepted by the court. Bennett's written plea clearly states: "My attorney has explained to me the meaning and purpose of a motion in arrest of judgment, and I do state that I fully understand same." In addition, the plea asserts that Bennett discussed the matter thoroughly with his attorney. We will not look beyond the record before us to refute any of the provisions of the plea form signed by Bennett.

As the record before us supports that Bennett was informed of the 8(2)(d) requirements, we find that his failure to file a motion in arrest of judgment has waived any challenge to his plea on appeal.

II. Ineffective assistance. Bennett claims his trial counsel was ineffective in failing to: (1) discuss with him the trial information, minutes of testimony and elements of the offense, including specific intent; (2) honor his request to view a

videotape of an interview with the victim; (3) consult with him about waiving his right to a preliminary hearing; (4) explain the plea form or have him read through it; (5) explain the requirement of filing a motion in arrest of judgment; (6) discuss with him the possible effects of the medication he was taking on his competency; and (7) withdraw the plea for lack of requisite intent. We find that the record is insufficient to resolve these claims on direct appeal and therefore preserve them for postconviction relief. *See State v. Pearson*, 547 N.W.2d 236, 241 (Iowa App. 1996) (unless the record on direct appeal is sufficient to evaluate the merits of a defendant's ineffective assistance of counsel claims, they are generally preserved for postconviction to allow trial counsel an opportunity to defend the charge).

Bennett also claims that his counsel was ineffective for failing to conduct depositions and interview witnesses, and failing to "see that the court followed required procedures." We find these claims to be too general in nature to allow us to address the allegations or preserve them for postconviction proceedings. *See Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994).

Having considered all issues properly before us on appeal,[1] we hereby affirm Clint Bennett's conviction and sentence.

AFFIRMED.

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[1] In his brief, Bennett also claimed his trial counsel was ineffective in failing to explain the sex-offender registry requirement and failing to file motions or defenses. However, Bennett conceded these issues at oral argument and withdrew those claims.