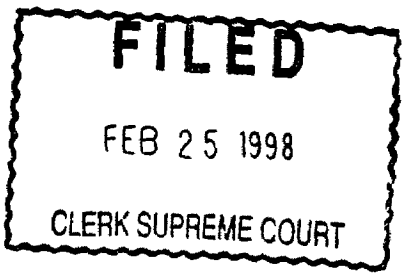
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IN THE COURT OF APPEALS OF IOWA

No. 7-626 / 97-0183
Filed February 25, 1998



STATE OF IOWA,
Appellee,

vs.

JAMES NEWMAN, JR.,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Walter W. Rothschild, District Associate Judge.

Defendant appeals the judgment and sentence on his guilty plea to the charge of operating while intoxicated. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Kevin Cmelik, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steve Norby, Assistant County Attorney, for appellee.

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

HUITINK, J.

Defendant appeals the decision of the district court which found his motion in arrest of judgment was untimely. We affirm.

On December 23, 1994, James Newman, Jr., was charged with operating while intoxicated, in violation of Iowa Code section 321J.2, and possession of a controlled substance (marijuana), in violation of section 124.401(3).

The case was set for trial in February 1995. Before the trial, however, Newman asked to have the case set for guilty plea proceedings. Newman twice failed to appear to enter his plea, and the matter was continued.

In November 1995, Newman signed a written guilty plea to the charge of operating while intoxicated. The written guilty plea provided:

> I understand that a guilty plea waives all defenses I may have, except the Complaints, charges no offense and the right to challenge the plea. I further understand if I wish to challenge this plea I must have my attorney prepare and file a motion in arrest of judgment at least five days prior to the time for sentencing. My attorney has fully explained to me the procedure and the grounds for filing a motion in arrest of judgment.

The guilty plea was filed with the court on November 14, 1995, and the case was set for sentencing in March 1996. The charge of possession of a controlled substance was dismissed.

On March 7, 1996, Newman filed a motion to withdraw his guilty plea, which the court considered as a motion in arrest of judgment. Newman filed a number of continuances.

A hearing on the motion was held in October 1996. Newman testified he signed the written guilty plea, even though he did not fully understand it. The district court determined the motion in arrest of judgment was untimely under Iowa Rule of Criminal Procedure 23(3)(b) because it was filed more than forty-five days after the plea was entered.[1] The court found it would place an undue burden upon the State to be required to prove defendant's guilt almost two years after the event. Newman appeals.

Newman claims his motion in arrest of judgment was not untimely. He points out rule 23(3)(b) does not preclude review of plea proceedings where the trial court fails to personally inform the defendant that he may file a motion in arrest of judgment and the consequences of failing to do so. *See State v. Worley,* 297 N.W.2d 368, 370 (Iowa 1980). Newman entered a written guilty plea and he was not personally addressed by the court.

Under rule 8(2)(b), because the charge involved here was a serious misdemeanor, the court was not required to personally address defendant. *State v. Mensah,* 424 N.W.2d 453, 455 (Iowa 1988). In the written guilty plea, Newman waived his right to be present in court when the plea was entered. Therefore, we conclude he cannot complain because he was not personally addressed by the court.

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[1] Iowa Rule of Criminal Procedure 23(3)(b) provides a motion in arrest of judgment "must be made not later than forty-five days after plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction may be rendered, but in any case not later than five days before the date set for pronouncing judgment."

A defendant should not be allowed to set aside his guilty plea merely because he was informed of the matters listed in rule 8(2)(b) in writing instead of orally. *State v. Kirchoff,* 452 N.W.2d 801, 805 (Iowa 1990). We find Newman's written guilty plea fully apprised him of the matters found in rule 8(2)(b), and thus, there was no need for the court to address him in order to satisfy itself he was entering his plea voluntarily. *See State v. Yarborough,* 536 N.W.2d 493, 496 (Iowa App. 1995).

The same reasoning regarding the requirements of rule 8(2)(b) may also be applied to the court's duty to apprise a defendant under rule 8(2)(d) that he may file a motion in arrest of judgment. Newman's written guilty plea apprised him of his ability to file a motion in arrest of judgment. We find there was no need for the court to address him to determine if he understood he could file a motion in arrest of judgment and the consequences if he failed to do so.

We conclude Newman's motion in arrest of judgment was untimely. It was filed more than forty-five days after the guilty plea was entered and was not filed prior to five days before the date set for sentencing. The motion was filed 114 days after the guilty plea was entered and on the day scheduled for sentencing.

We affirm the decision of the district court refusing to set aside Newman's guilty plea. Costs of this appeal are assessed to Newman.

AFFIRMED.