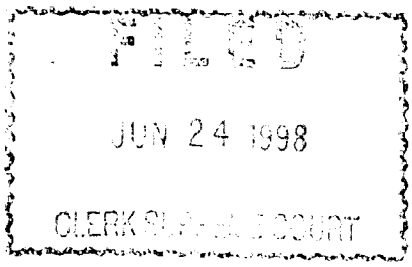
IN THE COURT OF APPEALS OF IOWA

No. 8-213 / 97-1194
Filed June 24, 1998



STATE OF IOWA,
Appellee,

vs.

MICHAEL JOYNER,
Appellant.

Appeal from the Iowa District Court for Scott County, David J. Sohr and James E. Kelley, Judges.

Michael Joyner appeals from his conviction, following a guilty plea, to willful injury in violation of Iowa Code section 708.4 (1995). **AFFIRMED.**

Robert J. Phelps of Phelps & Phelps, Davenport, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, William E. Davis, County Attorney, and Donald Frank, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Huitink and Streit, JJ.

HUITINK, J.

Michael Joyner appeals from his conviction, following a guilty plea, to willful injury in violation of Iowa Code section 708.4 (1995). Joyner contends: (1) the district court erred in finding there was a factual basis for the plea; and (2) he was denied effective assistance of counsel.

The victim attempted to buy drugs from Joyner who took the money but did not have any drugs. During the ensuing argument, Joyner and a friend, Keith Murray, beat the victim. As the victim attempted to run away Murray shot the victim, causing serious injury.

Joyner was charged with first degree theft and willful injury. Pursuant to a rule 9 plea agreement, Joyner pled guilty to willful injury and the State dismissed the theft charge. The court sentenced Joyner to an indeterminate ten-year prison term and imposed a mandatory minimum of five years to serve based on the use of a firearm.

We review plea proceedings for correction of errors of law. Iowa R. App. P. 4; *State v. Cuevas*, 322 N.W.2d 910, 911 (Iowa App. 1982). Claims of ineffective assistance of counsel, being constitutional claims, are reviewed de novo. *State v. Ray*, 516 N.W.2d 863, 865 (Iowa 1994).

On appeal, Joyner argues there was no factual basis for his guilty plea because it was never established: (1) he knew Murray was armed; (2) there was a plan to take money from the victim and assault her; (3) Joyner knew Murray was going to assist him; or (4) Murray would shoot the victim. He contends that even if there had been

a joint venture to steal the money, there was no showing Murray's shooting the victim was reasonably foreseeable or was done to further the crime of stealing the money. Therefore, Joyner argues the district court erred in finding a factual basis existed.

Such a claim challenges the adequacy of the plea proceedings. *See Wenman v. State*, 327 N.W.2d 216, 216-17 (Iowa 1982). Iowa Rule of Criminal Procedure 23(3)(a) requires a defendant to challenge the adequacy of a guilty plea by filing a motion in arrest of judgment.[1] Failure to file a motion in arrest of judgment because of ineffective assistance of counsel is an exception to the general preclusion of rule 23(3)(a). *State v. Brooks*, 555 N.W.2d 446, 448 (Iowa 1996); *State v. Schoelerman*, 315 N.W.2d 67, 71 (Iowa 1982).

Joyner claims his trial counsel was ineffective in: (1) failing to defend against the charge on a lack of participation in joint criminal conduct or aiding and abetting in the crime; and (2) compelling him to plead guilty in the absence of a factual basis.

The State argues, among other things, because Joyner failed to file a motion in arrest of judgment, he can only challenge his plea through his ineffective-assistance-of-counsel claims.

Joyner does not allege on appeal his trial counsel was ineffective in failing to file a motion in arrest of judgment. Consequently, such claim is waived. We do not

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[1] Rule 23(3)(a) provides in part:

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.

reach Joyner's other ineffective assistance claims or his challenge to the guilty plea proceedings because they have not been preserved for review.

AFFIRMED.