IN THE COURT OF APPEALS OF IOWA

No. 6-486 / 96-85

FILED
AUG 30 1996
CLERK SUPREME COURT

STATE OF IOWA,
Appellee,

vs.

GREGORY WAYNE MYERS,
Appellant.

Appeal from the Iowa District Court for Muscatine County, James A Weaver, Judge.

Gregory Myers appeals his convictions and sentences on two counts of driving while under suspension. **AFFIRMED AND REMANDED FOR RESENTENCING.**

Linda Del Gallo, State Appellate Defender, and Annette L. Hitchcock, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Richard R. Phillips, County Attorney, and Christine, Assistant County Attorney, for appellee.

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

PER CURIAM

This is an appeal by a defendant claiming his convictions and sentences for two counts of driving while license suspended should be reversed. We affirm defendant's conviction on appeal, and remand for resentencing in this memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On October 10, 1995, Gregory Myers was charged with two counts of driving while license suspended, in violation of Iowa Code section 321A.32 (1995). Myers entered into a plea agreement with the State, and signed a written acknowledgment of rights. At the guilty plea proceedings, the plea was accepted by the district court. On each charge the court sentenced Myers to forty days in the county jail, with thirty days of each sentence suspended. In addition, Myers was required to pay a fine and court costs. Myers now appeals his convictions and sentences.

I. Generally, a defendant must challenge any defect in guilty plea proceedings by a motion in arrest of judgment or be barred from challenging the proceeding on appeal, but appellate review is not barred when the trial court fails to inform the defendant of that requirement. *State v. Oldham,* 515 N.W.2d 44, 46 (Iowa 1994). Here, the court did not advise Myers of his right to file a motion in arrest of judgment. We therefore address Myers' challenge to the guilty plea proceedings.

Myers claims his guilty plea was not entered voluntarily and intelligently because the court failed to advise him of his rights pursuant to Iowa Rule of Criminal Procedure 8(2)(b). A trial court must inform a defendant of certain rights which are

set forth in rule 8(2)(b), and determine whether the defendant understands these rights. *State v. Ludemann*, 484 N.W.2d 611, 613 (Iowa App. 1992).

The rule also provides that a defendant may waive this procedure in a plea of guilty to a serious or aggravated misdemeanor. *See State v. Yarborough*, 536 N.W.2d 493, 495 (Iowa App. 1995). This waiver may be in a written document. *Id.* The crime of driving while license suspended is a serious misdemeanor. Iowa Code §321A.32. In the present case, defendant's written acknowledgment of rights included a waiver of the rights which are set forth in rule 8(2)(b). We conclude defendant waived his right to be orally advised of his rights.

II. Myers claims the district court erred by failing to state reasons for the sentence imposed. Under rule 22(3)(d), the trial court is required to state its reasons on the record for selecting a particular sentence. *State v. Lillibridge*, 519 N.W.2d 82, 83 (Iowa 1994). Where a court fails to state is reason for the imposition of a sentence, the defendant is entitled to resentencing. *State v. Jackson*, 488 N.W.2d 701, 705 (Iowa 1992).

We note that when the court gives effect to the parties' sentencing agreement, it does not abuse its discretion in failing to otherwise state reasons for the sentence imposed. *See State v. Cason*, 532 N.W.2d 755, 757 (Iowa 1995). Here, the court mentions the plea agreement, but the record does not show there was an agreement as to sentencing. We conclude that under the circumstances in this case, the court was required under rule 22(3)(d) to give its reasons for imposing the sentence given.

Because the court did not state any reasons for the sentences imposed, we determine defendant should be resentenced.

We affirm Myers' conviction for driving while license suspended. We reverse Myers' sentences and remand for resentencing. Costs of this appeal are assessed one-half to each party.

AFFIRMED AND REMANDED FOR RESENTENCING.