FILED
MAY 22 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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RITCHIE RICHARD HICKMAN,	)	
Petitioner-Appellant,	)	Filed May 22, 1984
vs.	)	
STATE OF IOWA,	)	4-85 / 69621
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Polk County - Joel Novak, Judge.

Petitioner appeals from a judgment denying his application for postconviction relief. He had pleaded guilty to a charge of burglary in the first degree, a violation of Iowa Code sections 713.1 and 713.2 (1981). On appeal, petitioner asserts that the court erred in not informing him at the time of his guilty plea that he had the right to file a motion in arrest of judgment and that there was no factual basis for the court's acceptance of defendant's guilty plea. AFFIRMED.

Stuart M. Pepper, Des Moines, for petitioner-appellant.

Thomas J. Miller, Attorney General, and John P. Messina, Assistant Attorney General, for respondent-appellee.

Heard by Snell, P.J., and Schlegel and Sackett, JJ.

Petitioner, Ritchie Richard Hickman, appeals from a judgment denying his application for postconviction relief. He had pleaded guilty to a charge of burglary in the first degree, a violation of Iowa Code sections 713.1 and 713.2 (1981). On appeal, petitioner asserts that the court erred in not informing him at the time of his guilty plea that he had the right to file a motion in arrest of judgment and that there was no factual basis for the court's acceptance of his guilty plea.

We review the case on assigned error. See Iowa R. App. P. 4 (1983).

I. Motion in Arrest of Judgment. Hickman claims his plea should be set aside because the guilty plea court failed to inform him of his right to file a motion in arrest of judgment.

The Iowa Rules of Criminal Procedure require a court to

> inform a 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.

Iowa R. Crim. P. 8(2)(d) (1981). However, failure of the court to inform a defendant of this right does not require us to set aside the guilty plea. Rather, noncompliance with rule 8(2)(d) simply means that our review is not precluded by Iowa Rule of Criminal Procedure 23(3)(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"). State v. Taylor, 301 N W.2d 692, 693 (Iowa 1981).

Thus, the court's failure to inform Hickman of his right to file a motion in arrest of judgment does not constitute reversible error, but merely allows us to consider on appeal his challenges to his guilty plea.

II. Factual Basis for Guilty Plea. Hickman was charged with first degree burglary, a violation of Iowa Code sections 713.1 and 713.2, and first degree

robbery, a violation of Iowa Code sections 711.1 and 711.2, in a trial information filed on March 25, 1981. On July 28, 1981, he appeared before the court to plead guilty to burglary in the first degree, pursuant to a plea bargain. At the plea hearing, the following explanation of the bargain took place:

> [Counsel for defendant]: Your Honor, I would like to make record here that we are pleading guilty conceding the point that there was a firearm involved in this case but maintaining the position that my client was not the individual that had the firearm. There were other individuals involved in this case. And furthermore, with the understanding with the County Attorney, and I believe with the Court as well, that there will not be a finding of a firearm in this plea of guilty.
>
> [Attorney for the State]: To where the five-year minimum additional charge would take effect. We are dropping the specific representation.
>
> THE COURT: If you allege that Ritchie Hickman was involved in a burglary with a person who was armed, it is your contention that, since he was not personally armed, that that takes it out of the mandatory provisions?
>
> [Attorney for the State]: Your Honor, it is my position that we can charge Burglary in the First Degree under the theory that a gun was involved but not specifically go for the minimum five-year term that the person that committed the crime represented that they had that gun.
>
> THE COURT: Is that your understanding, [counsel for defendant]?
>
> [Counsel for defendant]: Yes, Your Honor. I believe that we can create a factual basis for purposes of the plea, but with the understanding that there will be no finding on the part of the Court on a special interrogatory relating to the firearm, so that the mandatory minimum five-year sentence would not apply in that case. That is our position.
>
> THE COURT: Mr. Hickman, these are technical legal matters, but has it been explained sufficiently to you that you understand the conversation that has been going on?
>
> THE DEFENDANT: Yes.

Hickman contends that, because the court found that the defendant did not have a firearm in his possession, it could not find a factual basis for accepting defendant's guilty plea of first-degree burglary.

Burglary in the first degree is defined as occurring when a person has a dangerous weapon in his possession while perpetrating a burglary. See Iowa Code section 713.2 (1981). The trial information in the instant case charged defendant with aiding and abetting in the commission of burglary in the first degree. As the State points out, because defendant was charged as an aider and abettor, it was not necessary for him to have been in possession of a dangerous weapon in order to be found guilty of first-degree burglary. Aiding and abetting is an offense for which:

> All persons concerned in the commission of a public offense, whether they directly commit the act constituting the offense or aid and abet its commission, shall be charged, tried and punished as principals. The guilt of a person who aids and abets the commission of a crime must be determined upon the facts which show the part he or she had in it, and does not depend upon the degree of another person's guilt.

Iowa Code § 703.1 (1981).

The bargain presented to the court allowed Hickman to plead guilty to first-degree burglary in return for having the charge of first-degree robbery dropped. As a further benefit of the bargain, the State did not specially charge that the mandatory minimum of Iowa Code section 902.7 should apply. Section 902.7 requires that a person found guilty of a forcible felony, who was in possession of a firearm while participating in that felony, "shall serve a minimum of five years of the sentence imposed by law," and "shall not be eligible for parole" until he has served that five-year minimum. Iowa Code § 902.7 (1981). Therefore, it was possible for the court in the case at bar to find that Hickman was not in possession of a firearm while participating in a felony, for the purpose of avoiding the mandatory minimum five-year sentence of section 902.7, but to find a factual basis existed for a guilty plea to first-degree burglary, because an aider and abettor may be punished as a principal, depending on the facts of the case, and Hickman aided and abetted in the perpetration of a burglary during which at least

one of the perpetrators carried a dangerous weapon. See § 703.1. The court did not err in accepting Hickman's guilty plea.

AFFIRMED