IN THE COURT OF APPEALS OF IOWA

No. 1-163 / 00-0516
Filed May 9, 2001

FILED
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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOHN WILLIAM HUEBSCH,
Defendant-Appellant.

Appeal from the Iowa District Court for Webster County, Fredrick E. Breen, District Associate Judge.

Defendant appeals from the judgment and sentence entered upon his guilty plea to operating while intoxicated in violation of Iowa Code section 321J.2 (1999). He contends he was unable to enter an effective guilty plea because he was on medication for heart problems and was experiencing problems with the medication to such a degree that he could not concentrate upon the court's inquiries. **AFFIRMED.**

C. Joseph Coleman, Jr. of Coleman & Enke, Fort Dodge, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Ron Robertsen, County Attorney, and Ricki L. Williamson, Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MILLER, J.

John William Huebsch appeals from the judgment and sentence entered upon his guilty plea to operating while intoxicated in violation of Iowa Code section 321J.1 (1999). He contends he was incapable of rendering a voluntary guilty plea because he was on medication for his heart condition and was experiencing problems with his medication to such a degree that he could not concentrate upon the court's inquires. We affirm.

I. BACKGROUND FACTS

The State charged Huebsch with second-offense operating while intoxicated (OWI) in violation of Iowa Code section 321J.2 (1999). On January 11, 2000, he signed a written guilty plea to OWI first offense. The district court accepted Huebsch's guilty plea following an in-court colloquy on the plea held on that same day. The sentencing hearing was continued once due to Huebsch's health problems. Huebsch did not file a motion in arrest of judgment. At the rescheduled sentencing hearing the court sentenced Huebsch to one year in the county jail with all but seven days suspended, placed him on probation for two years, and imposed a fine and applicable surcharges.

Huebsch filed a direct appeal from the judgment and sentence. He alleges he was unable to render an effective and voluntary guilty plea because he was on medication at the time of entry of his plea and was suffering problems with his medication that caused him difficulty in understanding. The State argues Huebsch has failed to preserve error on his claim.

II. MERITS

The threshold question here is whether Huebsch's failure to challenge the plea proceeding by a motion in arrest of judgment precludes his challenge of the plea proceeding on appeal. Iowa Rule of Criminal Procedure 23(3)(a) provides in relevant 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." Iowa R. Crim. P. 23(3)(a). This rule, however, must be read in conjunction with Iowa Rule of Criminal Procedure 8(2)(d). *State v. Kirchoff*, 452 N.W.2d 801, 803 (Iowa 1990). "[W]hen a defendant is not advised, pursuant to rule 8(2)(d), of the necessity for filing the motion, it is not a prerequisite for appeal." *State v. Burden*, 445 N.W.2d 395, 396 (Iowa Ct. App.) 1989). Rule 8(2)(d) states:

> 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.

In his written plea of guilty Huebsch acknowledged he understood that

> [A]ny challenge to the guilty plea or alleged defects in the plea proceedings must be raised by a written Motion in Arrest of Judgment filed no later than 45 days after my plea is accepted but not less than five days before the date set for pronouncing judgment and that failure to raise such challenge shall preclude the right to assert them in this court or on appeal to another Court.

Furthermore, at the conclusion of the plea colloquy the trial court informed Heubsch that any challenge to the validity of the plea proceeding had to made by a motion in arrest of judgment, a failure to file such a motion resulted in loss of any right to challenge the validity of the plea, and that any such motion had to be filed not less than five days before the date the Court had just scheduled for

sentencing, February 14, 2000. Huebsch did not file a motion in arrest of judgment.

Where the trial court informs the defendant of the procedural requirements of our rules, "we will not hesitate to preclude challenges to plea proceedings on appeal." *Kirchoff*, 452 N.W.2d at 803 (quoting *State v. Worley*, 297 N.W.2d 368, 370 (Iowa 1980)). Based on the record before us we conclude the trial court substantially complied with the requirements of Iowa Rule of Criminal Procedure 8(2)(d). *See Patten v. State*, 553 N.W.2d 336, 337 (Iowa Ct. App. 1996) (holding substantial compliance with the requirements of rule 8(2)(d) is required).[1] Therefore, Huebsch's failure to file a motion in arrest of judgment challenging the guilty plea waived the error he now alleges on appeal and thus precludes this direct attack on his guilty plea. *State v. Miller*, 590 N.W.2d 724, 725 (Iowa 1999); *State v. Brooks*, 555 N.W.2d 446, 448 (Iowa 1996). The judgment of the district court is therefore affirmed.

AFFIRMED.

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[1] During the plea colloquy the trial court did not mention the second time limit for a motion in arrest of judgment, forty-five days after the plea of guilty. However, in his appeal Huebsch raises no claim or issue regarding this omission. Further, this time limit would have had no application under the facts as the trial court had scheduled sentencing for thirty-four days after the plea.