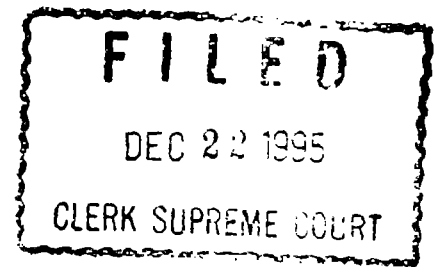


IN THE COURT OF APPEALS OF IOWA

No. 5-612 / 95-0260



STATE OF IOWA,

Appellee.

vs.

SAUL ANDRE GRANT,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jon Fister,
Judge.

Defendant appeals the denial of his motion in arrest of judgment.

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General; Richard J. Bennett, Assistant Attorney
General; Thomas J. Ferguson, County Attorney; and Shawn S. Wehde, Assistant
County Attorney, for appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

HAYDEN, P.J.

The defendant, Saul Grant, contends: 1) his defense counsel was ineffective in failing to challenge the adequacy of the court's determination of whether he understood the nature of the charges against him; and 2) the trial court erred in denying his motion in arrest of judgment. We affirm.

I. INEFFECTIVE ASSISTANCE OF COUNSEL.

The defendant was charged with first-degree robbery and second-degree kidnapping. Trial on the charges commenced on November 29, 1994. After one day of trial, the defendant decided to change his plea to guilty. In accordance with the requirements of Iowa Rule of Criminal Procedure 8(2)(b)(1), the trial court informed the defendant of the nature of the charges to which he was offering a plea. The defendant's plea of guilty was then accepted on November 30, 1994.

During the trial and at the time he entered his guilty plea, the defendant was represented by attorney Ristvedt. On December 22, 1994, the defendant orally informed the court of his desire for the appointment of new counsel and his wish to file a motion in arrest of judgment. Attorney Ristvedt was allowed to withdraw and attorney Ackerman was appointed to represent the defendant.

Attorney Ackerman filed a motion in arrest of judgment on January 12, 1995. As noted in the State's brief, the newly appointed counsel did not use the motion to

raise the issue of whether the defendant understood the nature of the charges when he plead guilty. The defendant now raises this issue on appeal in the context of a claim of ineffective assistance of counsel. While we are not convinced error was preserved on this issue, we will, nonetheless, address it on its merits. *See Ort v. Klinger*, 496 N.W.2d 265, 267 (Iowa App. 1992).

A defendant bears the burden of proving by a preponderance of the evidence that he received ineffective assistance of counsel. *State v. Wissing*, 528 N.W.2d 561, 563 (Iowa 1995). He must prove two elements: 1) counsel failed to perform an essential duty; and 2) he was prejudiced by counsel's omission. *Id.* at 563-64. Our review is based upon an evaluation of the totality of the circumstances. *Davis v. State*, 520 N.W.2d 319, 321 (Iowa 1994).

Iowa Rule of Criminal Procedure 8(2)(b)(1) requires a trial court to inform a defendant of, and determine that the defendant understands, the nature of the charges to which his plea is offered. The defendant does not dispute the trial court informed him of the nature of the charges. He claims only that the court failed to determine whether he understood the nature of those charges, and he claims his trial counsel was ineffective in not challenging his guilty plea on this basis.

While it has been suggested a trial court should inquire whether a defendant understands the charges, the absence of such a direct inquiry will not invalidate a conviction when the record, as a whole, demonstrates the defendant understood the

nature of the charges when he entered his plea. *State v. Watts*, 225 N.W.2d 143, 144-45 (Iowa 1975). The extent of a trial judge's explanation and inquiry into a defendant's understanding varies with the circumstance of each case, including the complexity of the charges and other factors involved in a particular case. *Id.* at 145.

In this case the defendant informed the court he was not taking any medication, was not suffering from any condition, and was not under the influence of anything which would affect his understanding of the guilty plea proceedings. The defendant confirmed for the court that other than the plea negotiations with the State, no threats or promises influenced his decision to plead guilty.

The record reveals the court informed the defendant of the elements of the charges and the defendant twice confirmed for the court that the elements described by the court were what occurred in this case. The defendant stated he had read the minutes of testimony and believed he would be convicted if the State's witnesses testified consistent with the minutes. At the conclusion of the colloquy, the trial court specifically found the defendant was acting voluntarily and understood his rights, the consequences of his plea, and the factual basis for it.

There was no breach of an essential duty with respect to the entry of the defendant's guilty plea. A review of the record as a whole reveals the defendant was informed of the nature of the charges and understood them. The elements of robbery and kidnapping were explained to him and after having had the opportunity to review

the minutes of testimony and sit through one day of trial, the defendant was able to confirm the charges were in fact what had occurred in this case. The defendant's understanding of the nature of the charges is clear even though he was not directly asked if he understood them. Given these circumstances, his counsel had no obligation to challenge the validity of the plea.

II. MOTION IN ARREST OF JUDGMENT.

The State's brief suggests the defendant's motion in arrest of judgment was untimely, but it does not address what effect a continued sentencing date has upon the time restrictions of Iowa Rule of Criminal Procedure 23(3)(b). We assume, without deciding, the defendant's motion was timely and proceed to the merits of the issue. We review the denial of a motion in arrest of judgment only to determine whether there is substantial evidence supporting the findings and conclusions reached by the trial court. *See State v. Hellickson*, 162 N.W.2d 390, 394 (Iowa 1968).

The defendant claimed his guilty plea was involuntary and was made under duress. The defendant contended the pressure of the trial, the risk his fiance/codefendant would face substantial prison time, and his alleged false admission of using a gun to commit the offenses are evidence of his duress.

There was substantial evidence to support the trial court's denial of the motion. The defendant was properly advised of the charges and possible sentences

faced by his fiancée if she were convicted, and it was reasonable for him to consider those factors in negotiating a plea agreement. His alleged “duress” stemming from the trial was the realization it was likely he would be convicted given the overwhelming amount of evidence introduced by the State on the first day of trial. There was substantial evidence the defendant had used, and had admitted using, a gun to commit the charged offenses. His subsequent denial of this fact does not invalidate his plea. The trial court was correct in denying the defendant’s motion in arrest of judgment.

AFFIRMED.