

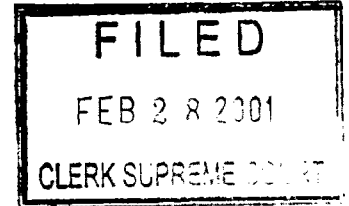
IN THE COURT OF APPEALS OF IOWA

No. 0-819 / 00-464
Filed February 28, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DONALD JAMES ALLBEE, JR.,
Defendant-Appellant.



Appeal from the Iowa District Court for Webster County, Gary L. McMinimee, Judge.

Allbee appeals from his convictions following guilty pleas to possession of methamphetamine with intent to deliver, possession of a methamphetamine without a drug tax stamp, possession of marijuana with intent to deliver, and possession of marijuana without a drug tax stamp. **AFFIRMED.**

Kurt John Stoebe, Humboldt, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Ron Robertson, County Attorney, and Timothy N. Schott, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

000437

HUITINK, P.J.

I. Background Facts and Proceedings.

On May 14, 1999, Allbee was charged with possession of marijuana with intent to deliver as a second offender and possession of marijuana without a tax stamp. Allbee filed a written arraignment, including a waiver of speedy trial, in connection with these charges on May 18, 1999. On July 7, 1999, he was charged with possession of methamphetamine with intent to deliver and possession of methamphetamine without a tax stamp. He was not arraigned on these charges until January 11, 2000. At that time Allbee orally waived the right to speedy trial. Allbee also entered guilty pleas to all above charges during this proceeding.

On February 7, 2000, Allbee filed a motion in arrest of judgment, alleging that he had not been properly arraigned and had been denied a speedy trial in connection with the marijuana-related charges. The district court denied this motion, stating "that the Defendant's pleas of guilty . . . waived the defenses and irregularities asserted by the Defendant in his Motions for Arrest of Judgment."

On appeal Allbee argues that the district court erred in denying his motion in arrest of judgment and that his counsel was ineffective for failing to file motions to dismiss or to withdraw the guilty pleas.

II. Motion in Arrest of Judgment.

Our standard of review is whether the court abused its discretion in denying the defendant's motion to withdraw his guilty plea. *State v. Malone*, 511 N.W.2d 423, 424 (Iowa Ct. App. 1993). In the context of a guilty plea

proceeding, the motion in arrest of judgment is a vehicle for challenging defects in the proceeding itself. See Iowa R. Crim. P. 8(2)(d), 23(3). All defenses and irregularities, except that the information or indictment charges no offense or defects in the plea proceeding, are waived by entry of a guilty plea. See *State v. Morehouse*, 316 N.W.2d 884, 885 (Iowa 1982); *Zacek v. Brewer*, 241 N.W.2d 41, 50 (Iowa 1976). Allbee's assertion that the district court erred in denying his motion in arrest of judgment based on a violation of his right to a speedy trial or a delayed arraignment has no merit. See *State v. McGee*, 211 N.W.2d 267, 268 (Iowa 1973). We accordingly affirm on this issue.

III. Ineffective Assistance of Counsel.

Allbee also contends his counsel was ineffective for failing to file a motion to dismiss and a motion to withdraw the guilty plea due to the expiration of the speedy trial deadline. Ordinarily, we preserve claims of ineffective assistance of counsel raised on direct appeal for postconviction proceedings to allow full development of the facts surrounding counsel's conduct. *State v. Atley*, 564 N.W.2d 817, 833 (Iowa 1997). However, we will resolve ineffective assistance of counsel claims on direct appeal when the record is adequate to decide the issue. *State v. Arne*, 579 N.W.2d 326, 329 (Iowa 1998).

We find the record insufficient to determine whether counsel was ineffective in failing to file the motion to dismiss based on a denial of Allbee's right to a speedy trial. This claim is preserved for postconviction proceedings. See *State v. Mann*, 512 N.W.2d 814, 817 (Iowa Ct. App. 1993) ("Where the record is inadequate to permit us to resolve the claim, we preserve the claim in

order to provide the allegedly ineffective attorney the opportunity to explain his or her conduct.”). Because a motion to withdraw the guilty plea would not appropriately address the issue raised, we find counsel breached no essential duty by failing to file such motion. See *State v. Hoskins*, 586 N.W.2d 707, 709 (Iowa 1998) (Counsel is not incompetent for failing to pursue a meritless issue.).

The district court decision is affirmed in full.

AFFIRMED.