

FILED

APR 26 1983

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA**STATE OF IOWA,**

)

Plaintiff-Appellee,

)

Filed April 26, 1983

vs.

)

$$\begin{array}{r} 2-515 \\ \hline 67384 \end{array}$$
MARK ALAN TRAMAN,

)

Defendant-Appellant.

)

Appeal from Des Moines District Court, John C. Miller, Judge.

Defendant appeals from his conviction and sentence for conspiracy to commit kidnapping in the second-degree and conspiracy to commit robbery in the first-degree. **AFFIRMED.**

Scott D. Rosenberg, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Teresa Baustian, Assistant Attorney General, for plaintiff-appellee.

Heard en banc.

OXBERGER, C.J.

Defendant, Mark Alan Traman, appeals his conviction and sentence for conspiracy to commit kidnapping in the second degree and conspiracy to commit robbery in the first degree, in violation of Iowa Code Section 706.3. We affirm.

In exchange for an agreement not to prosecute other charges and potential charges, defendant pleaded guilty. Both charges arose out of the same incident. The defendant admitted at the guilty plea proceeding that he and two others confronted the victim, a paper boy, during early morning hours, took his bicycle, took him at knife point to a lake, stripped him, tied him to a tree and left. No motion in arrest of judgment was filed and defendant was sentenced to two consecutive prison terms not to exceed ten years each.

I. Effective Counsel

Defendant asserts that trial counsel was ineffective for allowing him to plead guilty to the two charges when a double jeopardy claim could have been raised, allowing him to plead guilty in the absence of a factual basis for the guilty plea, coercing him into pleading guilty by telling him that he would get a 103-year jail sentence if convicted of the other charges that were dropped pursuant to the plea bargain, failing to advise defendant in a manner that he could understand, advising him that he could probably not get a jury trial, adequately to explain the defense of diminished responsibility, failing to explain the plea bargain agreement, and failing to file for shock probation after advising defendant that he would. Both parties agree that all but the first two allegations should be resolved in postconviction proceedings. Therefore we will limit our review to the first two allegations.

A. Double Punishment

Defendant asserts that trial counsel was ineffective for allowing him to plead guilty to the two charges when a double jeopardy claim could have been raised. He claims he is being punished twice for a single act. Double jeopardy is a

defense which may be waived by a plea of guilty. State v. Birkestrand, 239 N.W.2d 353, 363 (Iowa 1976). Here the defendant claims his counsel was ineffective in waving his double jeopardy claim. The record is insufficient for us to determine this issue.

B. Lack Factual Basis for Plea

Defendant claims that his trial counsel was ineffective in permitting him to plead guilty in the absence of a factual basis for the guilty plea. Although the defendant was advised that a failure to file a motion in arrest of judgment precludes any challenge of the plea proceeding, he failed to file such a motion. Neither has he raised on appeal that trial counsel was ineffective because he failed to file a motion in arrest of judgment. Therefore, we are precluded from considering the challenge to the plea proceeding. State v. Schoelerman, 315 N.W.2d 67, 71 (Iowa 1982).

We find no reversible error. The trial court's judgment is affirmed.

AFFIRMED.