

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

BRENDA K. BRIGGLE,)

Defendant-Appellant.)

Filed March 9, 1988

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87-814

Appeal from the Iowa District Court for Woodbury County (42159), Richard F. Branco and Edwin L. Mitchell, Judges.

Defendant appeals her conviction following a guilty plea and sentence on two counts of delivery of a controlled substance in violation of Iowa Code section 204.401(1). **AFFIRMED.**

Charles Harrington, Chief Appellate Defender, and James F. Whalen, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Mark J. Zbieroski, Assistant Attorney General, for plaintiff-appellee.

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

PER CURIAM

Defendant pleaded guilty to two counts of delivery of a schedule II controlled substance in violation of Iowa Code section 204.401(1). The sentencing court sentenced defendant under section 902.9(4) of the Iowa Criminal Code, and committed her to the custody of the Director, Division of Adult Corrections, State of Iowa, for two terms not to exceed five years. The terms were to run concurrently.

Iowa Code section 204.413, titled mandatory minimum sentence, reads as follows:

A person sentenced pursuant to section 204.401, subsection 1, paragraph "a" or "b" shall not be eligible for parole until the person has served a minimum period of confinement of one-third of the maximum indeterminate sentence prescribed by law. . . .

The judge who took defendant's plea did not advise her if she was committed to prison she would be required to serve one-third of her sentence before she could be paroled. Defendant claims she was denied effective assistance of counsel because her attorney failed to preserve for appeal the district court's failure to inform her of the applicability of Iowa Code section 204.413.

Defendant also claims the judge who took her plea failed to comply with Iowa Rules of Criminal Procedure 8(2)(b)(2) by failing to inform her the provisions of Iowa Code section 204.413 (1987) applied to her. The applicable portion of Iowa Rule of Criminal Procedure 8(2)(b)(2) provides:

Before accepting a plea of guilty, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

* * *

(2) The mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered.

Defendant argues the effect of Iowa Code section 204.413 is the same as a minimum sentence which requires the trial court to discuss this with the defendant. Defendant presents us a logical and well-reasoned argument in support of this contention. We do not agree with her as the law is contrary to her position.

In the case of State v. Morehouse, 316 N.W.2d 884, 886 (Iowa 1982), the Iowa Supreme Court held:

Section 204.413 is not a sentencing provision. It merely provides a limitation on eligibility for parole. Parole, as defined by section 906.1, is the release of a person already committed to custody. Where possible two provisions should be reconciled and read together.
...

When incarceration was ordered defendant became subject to the provisions of section 204.413 and must serve one-third of the maximum indeterminate sentence.

The district court is not required to inform defendant of the parole restrictions applicable to him. Boge v. State, 309 N.W.2d 4238, 431 (Iowa 1981); Grout v. State, 320 N.W.2d 619, 620 (Iowa 1982). See also Fryer v. Scurr, 309 N.W.2d 441 (Iowa 1981).

Since the prevailing Iowa authority holds Iowa Code section 204.413 is not a sentencing statute but is a limitation on parole eligibility, the plea taking judge was not required to inform defendant of its requirements. Accordingly, defendant was not denied effective assistance of counsel because her attorney allegedly failed to preserve this matter for appeal. In addition, we determine this fallout from the plea was a collateral consequence of her guilty plea and does not provide a basis for a claim of ineffective assistance of counsel. See Mott v. State, 407 N.W.2d 481, 482, 483 (Iowa 1987), and Saadig v. State, 387 N.W.2d 315, 326 (Iowa 1986).

We decline to accept defendant's invitation to change the established law on this issue.

AFFIRMED.