FILED
DEC 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed December 30, 1981
vs.	)	
WILLIAM PETER WITRY,	)	1-364 65784
Defendant-Appellant.	)	

Appeal from Black Hawk District Court - Roger F. Peterson.

Defendant appeals his guilty-plea conviction of OMVUI, third offense, in violation of section 321.281, The Code 1979. On appeal, defendant asserts that: (1) the trial court erred by failing to make an on-the-record determination about defendant's competency to enter his guilty plea; and (2) a motion in arrest of judgment is not necessary to preserve such competency issue for appellate review. AFFIRMED.

Douglas F. Staskal of the State Appellate Defender's Office, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and John P. Messina, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Defendant appeals his guilty-plea conviction of OMVUI, third offense, in violation of section 321.281, The Code 1979. On appeal, defendant asserts that: (1) the trial court erred by failing to make an on-the-record determination about defendant's competency to enter his guilty plea; and (2) a motion in arrest of judgment is not necessary to preserve such competency issue for appellate review. Defendant requests that we remand the case to the trial court for a hearing to determine whether defendant was competent at the time he pleaded guilty. Our review is limited to correction of errors at law. Iowa R. App. P. 4. We affirm.

I.

On November 8, 1979, defendant appeared with counsel and entered a plea of guilty to OMVUI, third offense, in violation of section 321.281, The Code 1979. The plea was accepted and sentencing was set for December 20, 1979. The sentencing date was subsequently continued until January 4, 1980, at which time defendant filed an untimely motion in arrest of judgment questioning defendant's mental capacity at the time he pleaded guilty. On that same day, the trial court set a hearing "to determine whether or not defendant should be committed for alcoholism or drug dependency in lieu of punishment." Following such a hearing, on February 14, 1980, the trial court filed an order staying further proceedings pursuant to section 812.3, The Code 1979, and ordering a psychological evaluation at the Independence Mental Health Institute. The MHI report to the court diagnosed defendant as a "paranoid psychotic with delusional beliefs of supernatural control over his mind by other people." On March 24, 1980, after consideration of this report, the trial court ordered defendant committed to the MHI for alcoholism treatment prior to sentencing. The trial court never ruled on whether defendant was competent at the time he pled guilty and defendant's attorney never again requested such a ruling after raising the issue in the January 4, 1980, motion in arrest of judgment.

On August 6, 1980, defendant was discharged from the MHI. The MHI staff concluded that defendant was competent to participate in future court proceedings, but that any conclusion they could make as to whether defendant was actually competent when he pled guilty on November 8, 1979, would entail "excessive speculation" on their part. On September 26, 1980, defendant was sentenced to a term of imprisonment not to exceed five years. The sentence was suspended and defendant was placed on

probation for three years. Defendant filed this appeal on October 17, 1980.

II.

Defendant asserts that the trial court erred by failing to make an express determination that defendant was competent to enter a guilty plea. We disagree. As noted above, defendant's attorney never requested such a ruling in any of the court proceedings which followed the January 4, 1980, motion in arrest of judgment. If such a formal ruling was desired, it was the obligation of defendant's attorney to insist on a ruling. State v. Pelelo, 247 N.W.2d 221, 226 (Iowa 1976); State v. Schiernbeck, 203 N.W.2d 546, 547 (Iowa 1973); State v. Cunha, 193 N.W.2d 106, 111 (Iowa 1971). By failing to do so, the motion is deemed overruled and any right to complain about the absence of a ruling is waived. Id.

We do not decide whether the preservation of error rule of Iowa R. Crim. P. 23(3)(a) should be applied to competency issues, and affirm the trial court for the reasons specified above.

AFFIRMED.