IN THE COURT OF APPEALS OF IOWA

No. 0-714 / 99-1874
Filed January 10, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RAYMOND BERNARD BIRDEN,
Defendant-Appellant.

FILED
JAN 10 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, John Fister, Judge, (sentencing) and Joseph Moothart, District Associate Judge, (plea).

Raymond Birden appeals the district court's judgment and sentence entered following his guilty pleas to two counts of domestic abuse assault causing bodily injury, assault with intent to commit sexual abuse, and interference with official acts. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James Tomka, Assistant State Appellate Defender (until withdrawal), and then Thomas McCann, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Linda Meyers, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Vogel and Hecht, JJ.

STREIT, P.J.

I. Background Facts and Proceedings.

Raymond Birden was charged with assault with intent to commit sexual abuse, interference with official acts, and two counts of domestic abuse assault causing bodily injury. Although Birden's case was tried to a jury, a plea agreement was negotiated in the midst of jury instructions whereby Birden agreed to plead guilty in exchange for a recommended sentence totaling four years in prison. This plea agreement was accepted by the district court.

Birden subsequently filed a motion in arrest of judgment contesting the validity of the guilty plea, which, upon hearing, was denied.

On appeal Birden contends the district court erred in denying his motion in arrest of judgment because his plea was not voluntarily and intelligently entered.

II. Standard of Review.

We review a trial court's decision to grant or deny a request to withdraw a guilty plea for abuse of discretion. *State v. Hightower,* 587 N.W.2d 611, 612 (Iowa App. 1998). We do not find an abuse of discretion unless the defendant shows it was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Blum*, 560 N.W.2d 7, 9 (Iowa 1997).

III. Validity of Guilty Plea.

A defendant who enters a plea of guilty waives several constitutional rights. For the waiver to be valid under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, there must be an intentional relinquishment of known rights or privileges. *Johnson v. Zerbst,* 304

U.S. 458, 464, 58 S. Ct. 1019, 1023, 82 L. Ed. 1461, 1466 (1938). A guilty plea that is not both knowing and voluntary violates the due process guarantee. *McCarthy v. United States*, 394 U.S. 459, 466, 89 S. Ct. 1166, 1171, 22 L. Ed. 2d 418, 425 (1969). To ensure that a plea is knowingly and voluntarily made, trial courts must follow the colloquy set forth in Iowa Rule of Criminal Procedure 8(2)(b). *State v. Sayre*, 566 N.W.2d 193, 195 (Iowa 1997). Birden does not dispute that the district court followed the guidelines established by rule 8(2)(b). He claims, instead, that his guilty plea was not knowingly and voluntarily entered because he was pressured into pleading guilty by his counsel's ineffectiveness.

Specifically, Birden contends his frustration with trial counsel resulted in him being "emotionally distraught and otherwise mentally preoccupied such that he could not enter an intelligent plea." Review of the plea transcript indicates Birden chose to enter the guilty plea in part because he believed his trial counsel had not adequately represented him at trial. Birden undoubtedly was troubled by being faced with what is clearly a difficult tactical decision, as evidenced by the tears shed when asked whether he understood the term of the plea agreement. Birden's distress was addressed by the district court as follows:

> Most people that are looking at four years in prison can be expected to be upset and distraught; it would not be surprising if they were to cry. The question is was the plea knowingly made, did the defendant understand the consequences, was there a factual basis for it, and did he understand his rights.
>
> Neither party points out any particular in which those standards weren't met. There is no allegation of any particular right that Mr. Birden didn't understand. There isn't any allegation of any particular consequence, the four year sentence, that he didn't understand. He agreed that the record of trial minutes and testimony could be used as a factual basis for it, for the plea. And he agreed that there were no threats or promises of any kind made

> to him. So based on this record, even if it were timely or the motion were timely and that was waived because of some kind of unavoidable casualty, I would still hold that the motion would be denied.

We find the district court did not abuse its discretion in this case. Birden was faced with a tactical decision, which, although difficult to make, was made of his own volition and after being fully apprised of its consequences.

IV. Ineffective Assistance of Counsel.

One sentence of Birden's brief appears to assert an ineffective assistance of counsel claim. We decline to address this issue because Birden failed to argue or provide legal support for this claim. *See* Iowa R. App. P. 14(a)(3) ("Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue."); *Soo Line R.R. Co. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 691 (Iowa 1994) (finding that a litigant's random mention of an issue, without elaboration or supportive authority, is not sufficient to raise the issue for our review).

The decision of the district court is accordingly affirmed in full.

AFFIRMED.