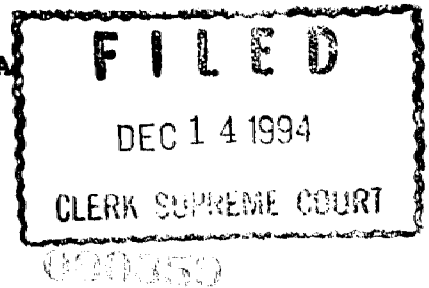


IN THE COURT OF APPEALS OF IOWA

No. 4-386 / 93-1914



STATE OF IOWA,

Plaintiff-Appellee,

vs.

TIMOTHY EUGENE PARROTT,

Defendant-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, J. C. Irvin and Glen M. McGee, Judges.

Defendant appeals from his convictions and sentence, following a guilty plea, of one count of criminal mischief, one count of serious assault and one count of operating a motor vehicle while intoxicated. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John Fatino, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Martha E. Boesen, Assistant Attorney General, Richard Crowl, County Attorney, and Daniel McGinn, Assistant County Attorney, for appellee.

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

HABHAB, J. 000000

In August 1993, Timothy E. Parrott was charged by trial information with one count of second-degree criminal mischief, one count of assault with intent to inflict serious injury, and one count of operating a motor vehicle while intoxicated. Pursuant to a plea agreement Parrott pled guilty to one count of third-degree criminal mischief, one count of assault causing bodily injury, and one count of operating a motor vehicle while intoxicated in violation of Iowa Code sections 716.5, 708.2(2) and 321J.2. (1993). In return, the State agreed to recommend Parrott's sentences be served concurrently.

At the plea proceedings, the county attorney explained to the district court what the terms of the plea bargain were. The court then asked Parrott, "Okay. Mr. Parrott, do you understand what's going on here?" Parrott replied he did understand. The court then explained the terms to Parrott and asked if Parrott understood them. Parrott replied he did. The court then explained the charges and penalties to Parrott and received a guilty plea to each charge. Finally, the district court made Parrott aware of the necessity of filing a motion in arrest of judgment in order to challenge the plea proceedings. At no time did the district court determine whether Parrott understood his guilty plea would result in a waiver of his constitutional rights set out in Iowa Rule of Criminal Procedure 8(2)(b)(3) and (4).

The district court sentenced Parrott to two years on the count of third-degree criminal mischief, one year on the count of serious assault, and sixty days on the count of operating a motor vehicle while intoxicated. The court ordered the sentences to be served concurrently. Parrott appeals.

On appeal Parrott contends the district court failed to comply with Iowa Rule of Criminal Procedure 8(2)(b) because the court did not apprise him fully of the constitutional rights he was relinquishing by entering a guilty plea nor did the court inquire into whether the plea was voluntary and intelligent. Parrott concedes error was not preserved on this issue because he did not file a motion in arrest of judgment. However, Parrott argues his claim should be considered because his counsel rendered ineffective assistance by failing to file the motion.

Parrott has raised constitutional questions due to his ineffective assistance of counsel claim, so our review is de novo. Polly v. State, 355 N.W.2d 849, 854 (Iowa 1984).

Since Parrott did not file a motion in arrest of judgment to challenge his plea proceedings, we cannot consider his plea proceedings issue on appeal unless Parrott's failure to file such a motion resulted from ineffective assistance of counsel. State v. Hildebrant, 405 N.W.2d 839, 840 (Iowa 1987).

To prevail on a claim of ineffective assistance, Parrott must show (1) his counsel failed to perform an essential duty, and (2) the failure prejudiced the

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applicant. Brewer v. State, 444 N.W.2d 77, 83 (Iowa 1989). Parrott has the burden to prove both of these elements by a preponderance of the evidence. Id.; Taylor, 352 N.W.2d at 685.

Ineffective assistance of counsel claims which cannot be decided on direct appeal due to an inadequate record may be preserved for possible postconviction relief. State v. Ueding, 400 N.W.2d 550, 553 (Iowa 1987). When the trial record alone is insufficient to resolve the claim, the issue should be preserved for postconviction proceedings in order to develop a more complete record. State v. Rawlings, 402 N.W.2d 406, 408 (Iowa 1987).

We find the record before us to be insufficient to decide the ineffective assistance claim. Parrott's attorney may have some reason for not filing a motion in arrest of judgment. If so, the record in postconviction proceedings must be made to reflect such reasons. See State v. Coil, 264 N.W.2d 293, 296 (Iowa 1978). We preserve the issue of ineffective assistance for possible postconviction proceedings.

Because we are unable to determine if Parrot's failure to file a motion in arrest of judgment was due to ineffective assistance of counsel, we cannot consider Parrot's challenge to his plea proceedings. See Hildebrant, 405 N.W.2d at 840. As a result, we affirm Parrot's conviction.

AFFIRMED.