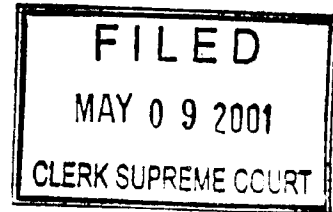


IN THE COURT OF APPEALS OF IOWA

No. 1-188 / 00-0912

Filed May 9, 2001



STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT LEE ROBINSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James D. Coil, District Associate Judge, (guilty plea) and Stephen C. Clarke, Judge (sentencing).

Robert Lee Robinson appeals from the judgment and sentence entered upon his guilty plea to driving while license barred. **AFFIRMED.**

Michael J. Jacobsma of Klay, Veldhuizen, Bindner, De Jong & Pals, P.L.C., Orange City, for appellant.

Thomas J. Miller, Attorney General, Darrel L. Mullins, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Linda Myers and Douglas Eichholz, Assistant County Attorneys, for appellee.

Heard by Sackett, C.J., and Huitink, and Streit, JJ.

STREIT, J.

Robert Robinson pled guilty to driving while license barred. See Iowa Code § 321.561 (1997). On appeal, Robinson claims the district court committed two purported errors at the plea proceeding: (1) the court did not tell him the State could not comment on his decision not to testify should the case proceed to trial; and (2) the court made an insufficient inquiry to assure he was making his plea voluntarily and intelligently.

Because Robinson's failure to file a motion in arrest of judgment precludes him from challenging the adequacy of the plea proceeding directly, he challenges it through an ineffective-assistance-of-counsel claim. See *State v. Miller*, 590 N.W.2d 724, 725 (Iowa 1999). We review his claim de novo. See *State v. Howes*, 525 N.W.2d 874, 876 (Iowa Ct. App. 1994). To prevail, Robinson must show his attorney's performance fell outside a normal range of competency and the deficient performance so prejudiced him as to give rise to the reasonable probability that, but for his counsel's errors, the result of the proceeding would have been different. See *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); *State v. McKettrick*, 480 N.W.2d 52, 55 (Iowa 1992). An attorney is not ineffective for failing to pursue an issue that has no merit. *State v. McPhillips*, 580 N.W.2d 748, 754 (Iowa 1998).

Robinson argues his plea was not voluntarily and intelligently made because the court did not tell him the State could not comment on his decision not to testify should his case proceed to trial. Rule 8(2)(b)(3) of the Iowa Rules of Criminal Procedure requires a court to inform a defendant who wishes to plead

guilty he has a right to a jury trial in which he has "the right not to incriminate [himself]." The court substantially complied with this requirement when it told Robinson the following:

You could not be made to testify at that trial, and you could rely on what is called your privilege against self-incrimination, and if you did so no inference of your guilt could be drawn either by a jury or by a judge simply because you did not testify.

See *State v. Kirchoff*, 452 N.W.2d 801, 804 (Iowa 1990) ("Substantial compliance with [Rule 8(2)(b)] is all that is required."); cf. *State v. Townsend*, 238 N.W.2d 351, 354 (Iowa 1976) (affirming a guilty plea upon the following advisement: "you have the right to be a witness in your own behalf or you can decline to be a witness"). The court was not required to further inform Robinson about the various nuances and implications of his right not to incriminate himself. Robinson's first claim is meritless.

Robinson also argues the court made an insufficient inquiry to assure he was making his plea voluntarily and intelligently. Rule 8(2)(b) "does not establish a litany that must be followed without variation before a guilty plea may be accepted." *Kirchoff*, 452 N.W.2d at 804. Among the questions the court asked Robinson were "Have any other threats or promises been made to you in order to get you to plead guilty?" and "Are you under the influence of any medication, alcohol, drug, or any other substance at this time which would impair your ability to understand the nature of these proceedings?". Questions regarding Robinson's age, the extent of his education, his ability to comprehend the English language, and the other eight matters Robinson lists in his brief may also have helped the court to determine whether he was making his plea voluntarily and

intelligently. However, nothing in the record—or even in Robinson's brief—suggests any of these matters actually affected his ability make a valid plea. Robinson's second claim is also meritless.

Because both of Robinson's challenges to the adequacy of his plea proceeding are meritless, his attorney was not ineffective for failing to file a motion in arrest of judgment. See *McPhillips*, 580 N.W.2d at 754. We affirm Robinson's conviction.

AFFIRMED.