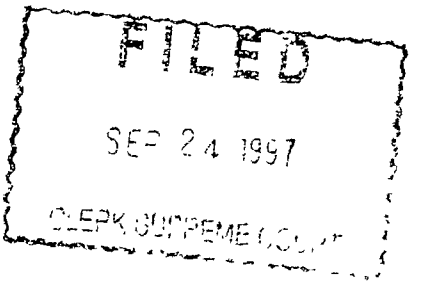
IN THE COURT OF APPEALS OF IOWA

No. 7-395 / 95-0085
Filed September 24, 1997

000493



STATE OF IOWA,
Appellee,

vs.

LAMONT RICHARD,
Appellant.

Appeal from the Iowa District Court for Scott County, Edward B. deSilva, Jr., Judge.

Defendant appeals from his guilty pleas for first-degree theft and criminal gang participation. **AFFIRMED.**

Judith J. Morrell, Davenport, for appellant.

Thomas J. Miller, Attorney General, Susan M. Crawford, Assistant Attorney General, William E. Davis, County Attorney, and Michael Walton, Assistant County Attorney, for appellee.

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

STREIT, J.

On appeal, defendant asserts his guilty pleas were not voluntarily or intelligently entered and the trial court should not have accepted them. He challenges the adequacy of the factual basis upon which his convictions are based and, further, asserts his postconviction counsel was ineffective. We affirm the court's acceptance of his pleas and preserve the ineffective assistance of counsel claim for further postconviction proceedings.

I. Facts and Procedural Background.

Defendant, Lamont Richard, was involved in a car jacking as part of a gang initiation. The defendant and others approached Darla Ornelis while she was waiting in her car at a red light, dragged her out of the car, and drove away her car. Several days later the police recovered the car after it was crashed into the side of a house.

Richard was charged with numerous offenses, including first-degree theft and criminal gang participation. After an in-court dialogue, the court accepted the guilty pleas to first-degree theft and criminal gang participation. On December 14, 1994, the court sentenced Richard to an indeterminate ten-year term for the theft conviction and an indeterminate five-year term for criminal gang participation. Richard filed a notice of appeal for these two convictions, but the appeal was stayed pending the outcome of postconviction appeals. The postconviction court denied his applications for relief finding that although defendant's IQ was below normal, his guilty pleas were voluntary.

II. Scope of Review.

This court reviews plea proceedings for correction of errors at law. Iowa R. App. P. 4. In considering a challenge to a guilty plea proceeding involving constitutional safeguards, we make an independent evaluation of the circumstances as shown by the entire record, which we review de novo. *State v. Oldham*, 515 N.W.2d 44, 46 (Iowa 1994).

III. Richard's Guilty Pleas.

Iowa Rule of Criminal Procedure 23(3)(a) requires a defendant challenge any defect in a guilty plea proceeding by a motion in arrest of judgment. If the motion is not filed, the defendant is barred from challenging the plea on appeal. Appellate review is not barred, however, when the court fails to comply with Iowa Rule of Criminal Procedure 8(2)(d) by failing to inform the defendant of the motion requirement and the consequences of failure to file. *See* Iowa R. Crim. P. 8(2)(d); *State v. West*, 326 N.W.2d 316, 317 (Iowa 1982). The trial court did not inform Richard of his right to appeal, thus, Richard is not barred from challenging his pleas and we reach the merits of his appeal.

Richard challenges the adequacy of the plea proceedings on two grounds: the voluntariness of his plea and the adequacy of the factual basis to prove he committed the crimes. Both challenges support his larger assertion the pleas were accepted in violation of Iowa Rule of Criminal Procedure 8(2)(b), which provides: "The court . . . shall not accept a plea of guilty without first determining that the plea is made

voluntarily and intelligently and has a factual basis." Iowa R. Crim. P. 8(2)(b). The court need only substantially comply with this rule; strict compliance is not required. *State v. Ludemann*, 484 N.W.2d 611, 613 (Iowa App.1992). Substantial compliance is met unless the court's disregard for the requirements of rule 8(2)(b) raises doubt as to the voluntariness of the plea. *State v. Fluhr*, 287 N.W.2d 857, 864 (Iowa 1980).

Richard argues he is mentally impaired and the impairment prevented him from understanding or comprehending his guilty plea. He argues under these circumstances the court should have taken extra precautions in accepting his pleas, but did not. The procedural requirements for entering a guilty plea assume the competency of the defendant to enter the plea and do not involve an inquiry into his mental capacity. *State v. Kempf*, 282 N.W.2d 704, 707 (Iowa 1979).

The record clearly displays the court took adequate precautions to assure Richard's understanding of his plea before entering it. At the beginning of his questioning, the court inquired whether the plea he was about to give was done so voluntarily. Richard replied, "yeah." The court informed Richard he could discuss any question or answer in or out of the courtroom with his attorney. Later in the proceeding, the court asked Richard if he knew what he was doing here today. Richard replied: "I know what I'm doing." The court informed Richard if he did not understand something, the judge would repeat it and explain what Richard did not understand. Richard was informed if he did not want to plead guilty at any time he could stop the proceedings.

The record is equally clear that despite any mental impairment, Richard adequately understood the nature of the offenses he was charged with, his plea to the charges, and his role in the incident. Richard informed the court he was twenty-one years old and could not read or write, but could "understand things." Richard said he was at the same house as gang members who were planning a car jack. He admitted he went with the gang to the car jacking. After the car was stolen, Richard drove away with the gang members. Richard explained he was not a member of the Vice Lords, but he was hanging around them and everyone else considered him a member.

Richard challenges the voluntariness of his plea by asserting the trial court did not properly explain the elements of the offense, including intent and aiding and abetting. It is not required that the district court discuss each element of the crime with a defendant to ascertain his understanding of the nature of the offense. *See State v. Killpack*, 276 N.W.2d 368, 370 (Iowa 1979). Lack of explanation of an element of offense is not reversible error if, under the circumstances, the accused understood the nature of the charge. *State v. Brown*, 376 N.W.2d 910, 911 (Iowa App.1985). In fact, in some situations the name of the offense itself has been held to be sufficiently descriptive. *Id.*

The court adequately explained the elements of the crimes to Richard at the plea proceedings. The court explained what the State must establish to prove theft and criminal gang participation by referencing the sections of the Iowa Code, putting the code language in layman's language, and intermittently asking Richard about his

understanding of the crimes. Further, the court explained to Richard that his sentences for the crimes he was pleading guilty to would run consecutive to each other and consecutive to the sentence he was presently serving. He told Richard there would be a substantial sentence imposed. This was adequate explanation.

We turn to Richard's claim there is an inadequate factual basis to show he committed theft or was a gang member. The record is replete with factual evidence that Richard participated in the crimes of aiding and abetting a theft and criminal gang participation. Richard was at a house where gang members were planning a car jacking. He got in the car with the gang members knowing where they were going. He got out of the car, approached the car, and was present as the victim was hauled from her car. He entered the stolen car with the gang members and drove away. He admitted he hung around Vice Lords and agreed he participated with them. Further, everyone considered him a member of the Vice Lords.

We conclude there is no basis for Richard's claim his plea was not knowing, voluntary, or without a factual basis. We affirm the trial court's decision.

IV. Ineffective Assistance of Counsel.

Richard contends his appellate counsel at the postconviction proceeding was ineffective because he did not appeal the court's postconviction ruling. Tapes of the police interrogating Richard were entered into evidence at the postconviction proceeding. Richard argues the tapes show police coercion, Richard's inability to provide a factual basis for the charges against him, and that his plea was not

voluntarily or intelligently made. Richard suggests that if his counsel had appealed the postconviction ruling, the tapes would be available for this court's review.

Generally, ineffective assistance of counsel claims are preserved for postconviction to allow trial counsel an opportunity to defend the charge. *State v. Mulder*, 313 N.W.2d 885,890 (Iowa 1981); *State v. Nebinger*, 412 N.W.2d 180, 191-92 (Iowa App. 1987). Where the record on direct appeal is not adequate to permit us to resolve the issue, we preserve the defendant's claim for postconviction proceedings so the facts may be so developed. *State v. Koenighain*, 356 N.W.2d 237, 238 (Iowa App. 1984). This also gives the allegedly-ineffective attorney the opportunity to explain his or her conduct. *State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978). We conclude there is an inadequate record for us to adjudicate Richard's claim without counsel's explanation for his conduct. We preserve his ineffective assistance of counsel claim for further postconviction proceedings.

AFFIRMED.