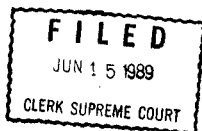


IN THE COURT OF APPEALS OF IOWA



93

EVERETT EMIL KUSGEN,)

Applicant-Appellant,)

vs.)

STATE OF IOWA,)

Resister-Appellee.)

9-125
88-1028

Appeal from the Iowa District Court for Woodbury County
(No. 97401C), Cameron B. Arnold, District Associate Judge.

Defendant appeals denial of postconviction relief.

AFFIRMED.

Jack A. Faith of Green, Faith & Hendrickson, Sioux
City, for applicant-appellant

Thomas J. Miller, Attorney General, and Ann E. Brenden
and Charles N. Thoman, Assistant Attorneys General, for
respondent-appellee.

Considered by Donielson, P.J., and Hayden and Habhab,
JJ.

DONIELSON, P.J.

Defendant, appearing pro se, entered a guilty plea to a charge of OWI, first offense in October 1986. He was convicted and fined \$500. In April 1988, defendant filed an application for postconviction relief challenging his conviction. Defendant contends his 1986 guilty plea was not intelligently and voluntarily entered.

Defendant based his application on his assertion that he was assisted in filling out the written guilty plea by a person whom he believed to be a lawyer acting on his behalf, but who later proved to be the assistant county attorney. He also asserts he was unaware that he was pleading guilty to a criminal offense and that comments made by the assistant county attorney confused him further on the subject. Defendant contends the postconviction court erred in concluding neither of his factual assertions is supported by the record.

Preservation of Error

The standard for the court's acceptance of a guilty plea is embodied in Iowa Rule of Criminal Procedure 8, which provides in part:

b. **Pleas of guilty.** The Court may refuse to accept a plea of guilty, and shall not accept a plea of guilty without first determining that the plea is made voluntarily and intelligently and has a factual basis.

Defendant asserts the facts show his guilty plea was not made voluntarily and intelligently, and therefore the

conviction was entered in violation of his constitutional rights See State v. Fluhr, 287 N.W 2d 857, 863 (Iowa 1980)

Under Iowa Rule of Criminal Procedure 23(3)(a), a "defendant's failure to challenge the adequacy of a guilty plea proceeding by motion in arrest of judgment shall preclude his or her right to assert such challenge on appeal Defendant did not file a motion in arrest of judgment. Consequently, he is barred under rule 23(3)(a) from challenging his guilty plea

AFFIRMED.