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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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| **STATE OF IOWA,** | ) | |
| Plaintiff-Appellee, | ) | |
| vs. | ) | 215 |
| **DARWIN EUGENE LYNAM,** | ) | 8-477<br>87-1470 |
| Defendant-Appellant. | ) | |

Appeal from the Iowa District Court for Polk County (No. OM 21111) - Dick Strickler, Judge.

Defendant appeals the judgment and sentence entered in the district court on his plea of guilty to charges of operating a motor vehicle while under the influence of alcohol or a drug--second offense, in violation of Iowa Code section 321J.2. **REVERSED AND REMANDED.**

Raymond E. Rogers, Acting Chief Appellate Defender, and Barbara M. Anderson, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Sheryl A. Soich, Assistant Attorney General; and Joseph P. Weeg, Assistant County Attorney, for plaintiff-appellee.

Considered by Oxberger, C.J., and Schlegel and Hayden, JJ.

**OXBERGER, C.J.** 216

Defendant Darwin Eugene Lynam appeals the judgment and sentence entered in the district court on his plea of guilty to charges of second offense operating a motor vehicle while under the influence of alcohol or a drug in violation of Iowa Code section 321J.2. Our scope of review is for the correction of errors at law. We reverse and remand.

Lynam was stopped on Ashworth Road in West Des Moines after he crossed the center line and caused a police car to swerve. He failed five field sobriety tests and was arrested. He refused to provide samples of his blood or urine for chemical testing. Lynam entered a plea of guilty to the charge and asked to be immediately sentenced. The district court sentenced him to incarceration in the Polk County Jail for six months. All but seven days of the sentence was suspended. Lynam was placed on probation with several conditions for a period of two years, and his driver's license was revoked for a period of six years. Defendant now appeals the judgment and the sentence entered in the district court.

The issues presented are (1) whether the appeal may be prosecuted in view of Lynam's failure to file a motion in arrest of judgment pursuant to Iowa R. Crim. P. 23(3)(a), (2) whether the record shows compliance with the guilty plea requirements of rule 8(2)(b), and (3) whether the trial court erred in failing to state reasons for the sentence imposed.

In this case the trial court advised the defendant of the availability of a motion in arrest of judgment to attack the guilty plea but failed to warn the defendant that the consequence of a failure to file such a motion would be the preclusion of such a challenge on appeal.

> THE COURT: Darwin, you could have your sentencing postponed for at least 15 days. That would give you a right to file a motion in arrest of judgment. That motion is a motion that you can file attacking your plea of guilty, setting the plea of guilty aside, claiming that it wasn't made voluntarily. So you can have your sentence postponed for at least 15 days, or you could be sentenced today. Which would you prefer?

The State argues that Lynam was adequately warned that he could file a Motion of Arrest of Judgment and was sufficiently made aware of the purpose of such motion. However, we find Rule 23(3)(a) to require the court to both inform the defendant of the functions of a Motion in Arrest of Judgment and to warn the defendant that a failure to file such motion precludes the right to appeal. See Iowa R. Crim. P. 23(3)(a).

We therefore consider the issues raised by the defendant.

Iowa Rule of Criminal Procedure 8(2)(b) specifically requires that the trial judge personally address the defendant before the guilty plea may be accepted. The rule provides, in relevant part to this case:

> 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.

> Before accepting a plea of guilty, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands the following:
>
> * * * *
>
> (2) The mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered.
>
> (3) That the defendant has the right to be tried by a jury . . . .

Iowa R. Crim. P. 8(2)(b)(2) and (3).

Defendant asserts two deficiencies in the acceptance of his plea, (1) that the mandatory minimum penal consequences were not explained to him personally by the trial court, and (2) that his constitutional right to trial was not properly presented to him by the trial judge.

"Meaningful compliance" or "substantial compliance" with the procedural requirements for taking guilty pleas is sufficient. State v. Sisco, 169 N.W.2d 542, 548-51 (Iowa 1969). The record of proceedings in this case reveals that the only mention of penal consequences took place once the court had accepted the guilty plea and was pronouncing the sentence to the defendant. The record does not disclose any address by the trial court concerning penal consequences before the announcement of sentencing. The record is also void of any mention of any of the defendant's constitutional trial rights. The judge by personal colloquy must inform the defendant of his privilege against self-incrimination, his right to trial by

jury, and his right to confront his accusers, and determine that he understands and waives these rights. Brainard v. State, 222 N.W.2d 711, 718 (Iowa 1974).

It is true that the defendant signed a petition to plead guilty which contained the mandatory minimum penalty information and his constitutional trial rights, those written statements. However, those written statutes cannot serve as a substitute for an oral colloquy to satisfy rule 8(b). State v. Fluhr, 287 N.W.2d 857, 865 (1980). Thorough oral inquiry directed toward the defendant is the most efficacious means of probing and also demonstrating the defendant's understanding. Fluhr at 864.

The record provides no evidence of an elicitation from the defendant to indicate that he understood his particular constitutional trial rights or the penal consequences of the plea. We conclude that substantial compliance with rule 8 was not achieved and thus the conviction must be reversed. We need not reach the sentencing issue.

**REVERSED AND REMANDED.**