IN THE COURT OF APPEALS OF IOWA

No. 8-575 / 97-2327

STATE OF IOWA,

Plaintiff-Appellee,

vs.

LUEL ROBINSON,

Defendant-Appellant.

FILED
NOV 30 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Richard G. Blane, Judge.

Defendant appeals from the judgment and sentence entered upon his guilty plea to going armed with intent in violation of Iowa Code section 708.8 (1997).

AFFIRMED.

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

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, John P. Sarcone, County Attorney, and James Ward, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ.

MAHAN, J.

Luel Robinson appeals from the judgment and sentence entered upon his guilty plea to going armed with intent in violation of Iowa Code section 708.8 (1997). Robinson argues challenges to factual bases of guilty pleas should always be heard on direct appeal even if the defendant fails to file a timely motion in arrest of judgment. Robinson also contends his counsel was ineffective in failing to preserve error on his challenge to the factual basis of his guilty plea. We affirm.

Robinson faced robbery and weapons charges stemming from incidents on two separate occasions. On May 12, 1997, Robinson robbed a shoe store. On July 7, 1997, Robinson returned to that same shoe store with the intent to rob it again. He aborted his robbery attempt when he realized one of the store employees knew him and another employee recognized him as the man who had held her at gunpoint during the May 12 robbery. The going armed with intent charge is based on the July 7 incident.

Robinson ultimately entered guilty pleas on one count of second-degree robbery in violation of Iowa Code sections 711.1 and 711.3; one count of going armed with intent in violation of section 708.8; two counts of possession of a firearm by a felon in violation of section 724.26; and one count of forgery in violation of section 715A.2. Robinson also admitted habitual offender status.

The district court judge informed Robinson he needed to file a motion in arrest of judgment pursuant to Iowa Rule of Criminal Procedure 23(3) if he chose to attack the guilty pleas. No post-plea motions were filed. Robinson was sentenced to a total

indeterminate term of incarceration of seventy years. He received a fifteen-year indeterminate term on the crime of going armed with intent.

I. STANDARD OF REVIEW. Our review of constitutional rights is de novo. *State v. Haviland*, 532 N.W.2d 767, 768 (Iowa 1995). We must look at the totality of the circumstances as shown by the entire record. *State v. Cook*, 530 N.W.2d 728, 731 (Iowa 1995).

II. DIRECT REVIEW OF FACTUAL BASIS FOR A GUILTY PLEA. Direct review of Robinson's claim there is no factual basis for his guilty plea to the charge of going armed with intent is barred by his failure to timely move in arrest of judgment. Iowa R. Crim. P. 23(3)(a). However, this failure will not bar a challenge to a guilty plea if the failure to file a motion in arrest of judgment resulted from the ineffective assistance of counsel. *See State v. Carter*, 582 N.W.2d 164, 165 (Iowa 1998); *State v. Brooks*, 555 N.W.2d 446, 448 (Iowa 1996). Therefore, we see no reason to change the procedural requirement of timely filing a motion in arrest of judgment to obtain direct review of the factual basis for a guilty plea.

III. INEFFECTIVE ASSISTANCE OF COUNSEL AND LACK OF FACTUAL BASIS FOR A GUILTY PLEA. Ordinarily, we reserve claims of ineffective assistance of counsel raised on direct appeal for postconviction proceedings to allow full development of the facts surrounding counsel's conduct. *State v. Atley*, 564 N.W.2d 817, 833 (Iowa 1997). "Even a lawyer is entitled to his day in court, especially when his professional reputation is impugned." *State v. Coil*,

264 N.W.2d 293, 296 (Iowa 1978). However, we will resolve ineffective-assistance-of-counsel claims on direct appeal when the record is adequate to decide the issue. *State v. Arne*, 579 N.W.2d 326, 329 (Iowa 1998). In the case at bar, the record is inadequate to resolve these issues.

For these reasons, Robinson's assertions of ineffective assistance of counsel are reserved for postconviction proceedings, if any are brought. We affirm the judgment and sentence entered upon Robinson's guilty plea to going armed with intent in violation of Iowa Code section 708.8.

AFFIRMED.