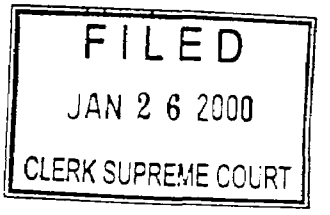
IN THE COURT OF APPEALS OF IOWA

No. 1999-469 (9-726) / 98-2088
Filed January 26, 2000



STATE OF IOWA,

Plaintiff-Appellee,

vs.

JANETTE HENDERSON,

Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Douglas Staskal, District Associate Judge.

Janette Henderson appeals from the judgment and sentence entered upon her Alford plea to theft in the third degree. **AFFIRMED.**

Cynthia Tofflemire, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, John P. Sarcone, County Attorney, and Joel Barrows, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Streit and Miller, JJ.

HUITINK, P.J.

I. Background Facts and Proceedings.

Janette Henderson and Amy Weiny were charged with third-degree theft based on allegations of shoplifting at a Des Moines department store. Henderson has steadfastly professed her innocence, claiming Weiny was responsible for the theft resulting in these charges. Henderson nevertheless agreed to enter a written *Alford* plea and proceed to immediate sentencing upon the court's acceptance of her plea in exchange for the State's favorable sentencing recommendations.

Henderson's plea and sentencing were conducted simultaneously with those for another defendant charged with an unrelated theft. The record of those proceedings includes the following:

> THE COURT: I accept both of your guilty pleas. In each case, you have the right to a waiting period between now and the time that you are sentenced.
>
> If you give that right up, you cannot file a motion in arrest of judgment. A motion in arrest of judgment is a motion that you would have to file if you are ever hoped to have your guilty plea set aside either because you changed your mind about pleading guilty, or for any other reason you felt, if you are sentenced today, you can never do that.
>
> Do you understand that, Miss Dupree?
>
> DEFENDANT DUPREE: Yes.
>
> THE COURT: You understand that, Miss Henderson?
>
> DEFENDANT HENDERSON: Yes.
>
> THE COURT: Knowing that, you wish to be sentenced today?
>
> DEFENDANT HENDERSON: Yes.
>
> DEFENDANT DUPREE: Yes.

Henderson received a two-year suspended sentence, probation, and was ordered to pay costs and restitution.

On appeal Henderson challenges the validity of her guilty plea citing procedural irregularities attending the plea proceedings and absence of a supporting factual basis for her guilty plea. She also demands a new trial based on newly discovered evidence supporting her claim Weiny was solely responsible for the thefts alleged..

II. Validity of Henderson's* Alford *Plea.

We review Henderson's claim for errors of law. Iowa R. App. P. 4.

Iowa Rule of Criminal Procedure 23(3)(a) provides:

> A motion in arrest of judgment is an application by the defendant that no judgment be rendered on a finding, plea, or verdict of guilty. Such motion shall be granted when upon the whole record no legal judgment can be pronounced. *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.*

(Emphasis added.) The foregoing excerpts from the sentencing record indicate Henderson waived her right to file a motion in arrest of judgment. As a result, she is precluded from challenging her guilty plea on direct appeal. We accordingly affirm on this issue. *See State v. Worley*, 297 N.W.2d 368, 370 (Iowa 1980).

Henderson's demand for a new trial is premised on Weiny's affidavit, which purportedly exonerates Henderson. The supreme court has earlier denied Henderson's request to include Weiny's affidavit in this appellate record. There is therefore nothing for us to consider in support of Henderson's request for a new trial. The judgment of the district court is affirmed in its entirety.

AFFIRMED.