

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

STATE OF IOWA,)

Plaintiff-Appellee,)

Filed February 23, 1983

vs.)

ALLEN SCHAEFER,)

2-51366273

Defendant-Appellant.)

Appeal from Jasper District Court - J. Harry Perkins, Judge.

Defendant appeals from the judgment entered upon his guilty plea to theft in the first degree pursuant to Iowa Code § 714.1(6) (1981), asserting that: 1) the notice to him at sentencing that it was necessary to file a timely motion in arrest of judgment was insufficient to comply with Iowa R. Crim. P. 8(2)(d); 2) the trial court's explanation of the charge of theft by check, Iowa Code § 714.1(6), was inadequate, and the record does not show that defendant understood the nature of the charge; and 3) an adequate factual basis for the plea was not established. **AFFIRMED.**

Patrick R. Grady, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Steven M. Foritano, Assistant Attorney General, for plaintiff-appellee.

Considered en banc.

PER CURIAM

Defendant, Allen Schaefer, appeals from the judgment entered upon his guilty plea to theft in the first degree. See Iowa Code § 714.1(6) (1981). On appeal, he asserts that: (1) the notice to him at sentencing that it was necessary to file a timely motion in arrest of judgment "in order to attack the proceedings of this Court" was insufficient to comply with Iowa R. Crim. P. 8(2)(d), because it was not specified that an appeal would be among the proceedings precluded by failure to file the motion, and because the court did not determine that the defendant understood the consequences of failure to file such a motion; (2) the trial court's explanation of the charge of theft by check, Iowa Code § 714.1(6), was inadequate, and the record does not show that defendant understood the nature of the charge; and (3) an adequate factual basis for the plea was not established, when defendant insisted that at the time he wrote the check the bank had been covering his overdraft checks, suggesting that he expected the check to be paid when presented.

The State asserts the trial court's notice to defendant that he would have to file a motion in arrest of judgment to challenge the plea was sufficient notification and that, therefore, the defendant's failure to file such a motion bars his present substantive contentions.

I. Scope of Review. Our review is on assigned error only. Iowa R. App. P. 4.

II. Applicability of Iowa Rule of Criminal Procedure 8(2)(b). The defendant raises several issues regarding the merits of the trial court's acceptance of defendant's guilty plea. Defendant, however, must overcome his failure to file a motion in arrest of judgment before this court can examine any merits.

The court in State v. Lucas, 323 N.W.2d 228 (Iowa 1982), stated:

We have consistently held that unless the trial court failed to address the defendant as required by Iowa R. Crim. P. 8(2)(d), we would not review the validity of a guilty plea in the absence of a rule 23(3)(a) motion in arrest of judgment. E.g., State v. Worley, 297 N.W.2d 368, 370 (Iowa 1980);

State v. Smith, 300 N.W.2d 90, 91 (Iowa 1981). The first question is therefore whether the court advised defendant of a rule 23(3)(a) motion as required by Iowa R. Crim. P. 8(2)(d).

Rule 8(2)(b) prohibits a court from accepting a guilty plea unless the court is satisfied that the defendant understands the nature of the charge, the penalty, and the right to a jury trial and cross-examine witnesses. Iowa R. Crim. P. 8(2)(b)(1)-(4). In addition, rule 8(2)(d) provides that "[t]he court shall inform the defendant that any challenges to a plea of guilty based on alleged defects in the plea proceedings must be raised in a motion in arrest of judgment and that failure to do so raise such challenges shall preclude the right to assert them on appeal."

Id. at 230. With these principles in mind, we review the instant facts.

The following record was made at defendant's guilty plea proceeding:

THE COURT: Mr. County Attorney, have you thought of any questions that I should have asked Mr. Schaefer that I didn't when I took his plea of guilty?

[county attorney]: The only one that comes to mind is that the Defendant must file an Arrest of Judgment not less than five days, more than 40 days¹ from this date or from the date of sentencing in order to attack the proceedings of this Court.

THE COURT: That certainly is a correct statement of the law, and if there's any such motion to be filed why you'll advise your client in that regard?

[Defense Attorney]: Right.

Defendant argues he was not properly informed of the consequences of failure to file the motion and that the court erred in not making sure defendant understood the nature of the charges.

Defendant urges us to find that the court must personally inform the defendant of the required motion in arrest of judgment. We find that the court adopted the statement of the prosecutor that the proceedings could be attacked only by the filing of such a motion. "Rule 8(2)(d) requires only that the court

¹ The county attorney incorrectly stated the time frame for filing a motion in arrest of judgment. Defendant does not assign this as error.

'inform the defendant' and contains no duty to obtain an acknowledgment from the defendant." State v. Lucas, 323 N.W.2d at 230. We find on the basis of the record before us that there was substantial compliance with rule 8(2)(b). Accordingly, due to defendant's failure to file such a motion, we will not review the validity of defendant's plea.

AFFIRMED.