

**IN THE COURT OF APPEALS OF IOWA**

No. 3-639 / 12-1546  
Filed August 7, 2013

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**EDWIN JOSEPH MANN,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, William A. Price (plea) and James D. Birkenholz (sentencing), District Associate Judges.

Mann challenges the adequacy of the plea proceedings and resulting sentence, claiming his plea should be vacated because the district court did not inform him he could receive a sentence that runs consecutively to a prior domestic abuse conviction. **AFFIRMED.**

Kevin Hobbs, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Tyler J. Buller, Assistant Attorney General, John Sarcone, County Attorney, and Michael Salvner, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

**VOGEL, P.J.**

This is an appeal arising from case number FECR 255691, from Polk County. On August 2, 2012, Edwin Mann pleaded guilty to domestic abuse assault enhanced, third offense, under Iowa Code section 708.1(1) and 708.2A(4) (2011), a class “D” felony. This is Mann’s fourth conviction for domestic abuse assault with the same victim.<sup>1</sup>

The prior three convictions, also in Polk County, occurred in 2011 and February 2012. For the first two convictions, the district court sentenced Mann to short terms of imprisonment followed by a period of probation. Upon committing his third offense, the court revoked Mann’s probation and sentenced him to six years of imprisonment.

During the plea proceeding in this fourth case, FECR 255691, the district court did not inform Mann of the possibility that his sentence could run consecutively to his sentences for his prior convictions. However, it did inform Mann of the maximum sentence that could be imposed for this crime. Mann tendered a guilty plea, which the court accepted. The court then informed Mann of his right to file a motion in arrest of judgment, though no motion was filed.

On August 21, 2012, the district court sentenced Mann to five years of imprisonment with respect to case number FECR 255691. The court ordered this term to run consecutively to the six-year term previously imposed for a total of eleven years. Mann now appeals, claiming the district court erred by failing to inform him, prior to entering his plea in case number FECR 255691, that the

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<sup>1</sup> From the record before us, the three prior convictions were Polk County case numbers AG 243263, FE 252657, and SR 250253.

court could impose a sentence to run consecutively with his sentences for his prior convictions for domestic assault. He also asserts trial counsel was ineffective for failing to inform Mann his sentence in case number FECR 255691 could run consecutively to his other prison terms or ensure the court included this information in its colloquy.

With regard to Mann's first argument, he did not preserve error. Mann failed to file a motion in arrest of judgment, which must be filed before a defendant can challenge the adequacy of a guilty plea. Iowa R. Crim. P. 2.24(3)(a). Nor may he rely on the exception in *State v. Meron*, 675 N.W.2d 537, 540 (Iowa 2004), which held if the district court fails to inform a defendant of the right to file a motion in arrest in judgment, the defendant may challenge the plea on direct appeal. The district court informed Mann of his right to file this motion. As such, the district court's alleged error cannot now be addressed on appeal.

However, failure to file this motion does not bar a challenge to his guilty plea if it resulted from ineffective assistance of counsel. *State v. Brooks*, 555 N.W.2d 446, 448 (Iowa 1996). We review ineffective-assistance-of-counsel claims de novo. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). To succeed on this claim, the defendant must show trial counsel failed to perform an essential duty, and prejudice resulted from counsel's failure. *Id.*

Mann relies on *Straw*, 709 N.W.2d at 134, claiming counsel failed to perform an essential duty when he did not ensure the district court's colloquy included the information that Mann's sentence could run consecutively to his other sentences for prior domestic abuse assault convictions. However, *Straw* held that failure to inform the defendant of the possibility of consecutive

sentences for multiple counts, charged in the same case, was a failure to perform an essential duty. *Id.* This decision was based on Iowa Rule of Criminal Procedure 2.8(2)(b), which requires the court to inform the defendant of the maximum possible sentence for his crime. The maximum sentence necessarily includes the possibility of consecutive sentences if there is more than one crime charged in the same case. Conversely, the maximum sentence in this case, which is only a single count, does not include the sentence arising from Mann's convictions in his previous cases.<sup>2</sup> Consequently, there is no parallel requirement for counsel to ensure the defendant be informed his sentence may be imposed consecutively to sentences arising from prior convictions, where there is no statutory requirement the sentences run consecutively. Therefore, Mann's counsel did not fail to perform an essential duty, and Mann cannot succeed on an ineffective-assistance-of-counsel claim.

**AFFIRMED.**

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<sup>2</sup> This is not a situation in which consecutive sentences are statutorily mandated. While it is possible a sentence from another case could be part of the defendant's "maximum sentence" under Iowa Rule of Criminal Procedure 2.8(2)(b), that is not the situation here.