IN THE COURT OF APPEALS OF IOWA

No. 6-695 / 05-2055
Filed October 11, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KIRK ALAN FREDERICK,
Defendant-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Jeffrey L. Larson (plea) and Timothy O'Grady (sentencing), Judges.

Defendant appeals from judgment and sentence entered on his guilty plea to first-degree burglary. **AFFIRMED.**

William Bracker of Bracker Law Office, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Matthew D. Wilber, County Attorney, and Kyle Jones and Jeffrey Tekippe, Assistant County Attorneys, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

Kirk Alan Frederick appeals from judgment and sentence entered on his guilty plea to first-degree burglary. *See* Iowa Code §§ 713.1, 713.3, 902.9(2) (2003). We affirm.

I. Background Facts and Proceedings

On December 10, 2004, the State filed a trial information charging Frederick with first-degree burglary and willful injury causing bodily injury. Frederick filed a written arraignment and plea of not guilty. After continuances agreed upon by the parties, Frederick failed to appear for trial on May 3, 2005, apparently due to his incarceration in Nebraska. On July 1, 2005, he filed a limited waiver of speedy trial until August 10. Frederick appeared on July 28, and trial was eventually rescheduled for September 7.

Frederick appeared for trial and moved to dismiss based on an alleged violation of his right to a speedy trial. The district court denied the motion to dismiss and proceeded to consider pretrial motions. After further discussion between the court, the State, Frederick, and trial counsel, the court granted Frederick's request for time to speak with his counsel off the record. After an approximately thirty-minute recess, the parties returned and advised the court they had reached a plea agreement. Frederick proceeded to plead guilty to first-degree burglary in exchange for the State's dismissal of the willful injury charge. The court advised Frederick of the consequences of his plea and established a factual basis for the plea. It found the plea to be knowing, voluntary, and supported by a factual basis.

Through new counsel, Frederick filed a motion in arrest of judgment on October 20, 2005. At a hearing on the motion, Frederick testified he "didn't even really know what to expect" when he arrived at court on September 7, because he had not met with his attorney or done any trial preparation. He further testified that after the court denied his motion to dismiss, his attorney advised him to enter a plea and appeal the court's ruling on the speedy trial issue. Frederick's new counsel argued the plea was not knowing and voluntary because Frederick did not know that by entering the plea he was waiving his right to appeal the district court's ruling on the speedy trial issue. *See State v. Speed*, 573 N.W.2d 594, 596 (Iowa 1998) ("[I]t is well settled that a plea of guilty 'waives all defenses or objections which are not intrinsic to the plea itself.'" (citations omitted)).

The court denied Frederick's motion in arrest of judgment. Frederick renewed the motion at sentencing. The district court denied it and proceeded to sentence Frederick to an indeterminate twenty-five-year term of incarceration. Frederick appeals, arguing the district court abused its discretion by denying his motion in arrest of judgment. In the alternative, he raises a claim of ineffective assistance of counsel.

II. Motion in Arrest of Judgment

Frederick argues that because he did not have a full understanding of the rights he relinquished when he pled guilty—specifically, the right to appeal the denial of his motion to dismiss on speedy trial grounds—his plea was not knowing and intelligent. Thus, he argues, the district court erred in denying his motion in arrest of judgment and refusing to allow withdrawal of his guilty plea.

We review the district court's denial of a motion in arrest of judgment for abuse of discretion. *State v. Myers*, 653 N.W.2d 574, 581 (Iowa 2002). We will reverse only if the district court's ruling was "based on reasons that are clearly unreasonable or untenable." *Id.* The refusal to allow withdrawal of a guilty plea will be upheld "'where a defendant, with full knowledge of the charge against him and of his rights and the consequences of a plea of guilty, enters such a plea understandably and without fear of persuasion.'" *Speed*, 573 N.W.2d at 596 (citations omitted).

Due to the constitutional rights a defendant gives up by pleading guilty, a plea must be voluntary, knowing, and intelligent. *State v. Loye*, 670 N.W.2d 141, 150-51 (Iowa 2003). Iowa Rule of Criminal Procedure 2.8(2)(*b*) codifies the due process mandate for acceptance of a guilty plea. *Id.* The rule requires the court to inform the defendant of his or her rights, to determine whether the defendant understands the charge and its possible minimum and maximum penalties, and to determine whether the defendant appreciates the direct consequences of the plea. *See* Iowa R. Crim. P. 2.8(2)(*b*)(1) – (5). We apply "a substantial compliance standard in assessing whether the trial court has adequately informed the defendant of the items listed in the rule." *Loye*, 670 N.W.2d at 151.

The district court informed Frederick of the maximum possible penalty for first-degree burglary, and explained the rights he would be relinquishing by pleading guilty, including the right to a jury trial, the right to confront and cross-examine the State's witnesses, and the right to call his own witnesses. The court proceeded to establish a factual basis for the plea. Finally, the court informed Frederick that any challenges to his plea must be raised in a motion in arrest of

judgment. *See* Iowa R. Crim. P. 2.8(1)(*d*). We conclude the district court substantially complied with rule 2.8(2).

To the extent Frederick argues the court should have informed him that by pleading guilty he was waiving his right to appeal the court's speedy trial ruling, we conclude the argument is without merit. The court is not required to inform the defendant of all indirect and collateral consequences of a guilty plea. *State v. Carney*, 584 N.W.2d 907, 908 (Iowa 1998). The distinction between "direct" and "collateral" consequences of a plea "turns on whether the result represents a definite, immediate and largely automatic effect on the range of defendant's punishment." *Id.* (citation omitted). Frederick's ability to challenge the court's speedy trial ruling on appeal falls squarely within those consequences our appellate courts have determined were collateral to the guilty plea. *See id.* (citing cases).

While we acknowledge that "[n]either defense counsel nor the court may *misinform* a defendant regarding collateral consequences of a guilty plea," *Saadiq v. State*, 387 N.W.2d 315, 324 (Iowa 1986), the alleged misinformation in this case came from trial counsel, not the court. Moreover, there is nothing in the record of the plea proceeding itself to suggest Frederick was misinformed as to his right to appeal the court's speedy trial ruling. The only evidence of misinformation comes from Frederick's self-serving testimony at the hearing on the motion in arrest of judgment. We conclude Frederick's testimony, without more, was insufficient to prove the plea was involuntary, unknowing, or unintelligent. Therefore, the district court did not abuse its discretion by denying Frederick's motion in arrest of judgment.

III. Ineffective Assistance of Counsel

Frederick's arguments related to the actions of trial counsel are more appropriately addressed in the context of an ineffective-assistance-of-counsel claim. Frederick contends his trial counsel provided ineffective assistance in several respects related to the guilty plea. To establish a claim of ineffective assistance of counsel, Frederick must show (1) counsel failed to perform an essential duty and (2) prejudice resulted. *State v. Ceaser*, 585 N.W.2d 192, 195 (Iowa 1998). "Unless the record on direct appeal is adequate to address these issues, a claim of ineffective assistance of counsel is preserved for consideration in postconviction relief proceedings." *Speed*, 573 N.W.2d at 598. We conclude the record before us is inadequate to address the ineffective assistance claims Frederick raises on direct appeal. Accordingly, we preserve Frederick's claims of ineffective assistance for possible postconviction proceedings.

AFFIRMED.