**IN THE COURT OF APPEALS OF IOWA**

No. 7-226 / 06-0383
Filed May 23, 2007

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

**vs.**

**MICHAEL BYRON ABRAHAMSON,**
Defendant-Appellant.

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Appeal from the Iowa District Court for Warren County, Darrell Goodhue, Judge.

Michael Abrahamson appeals from the judgment and sentence entered upon his guilty plea to possession of a precursor. **AFFIRMED**

Mark C. Smith, State Appellate Defender, and Shellie Knipfer, Assistant Appellate Defender, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Brian Tingle, County Attorney, and Douglas A. Eichholz, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Vogel and Miller, J.J.

**VOGEL, J.**

Michael Abrahamson appeals from the judgment and sentence entered on his guilty plea to possession of a precursor, pseudoephedrine, in violation of Iowa Code section 124.401(4) (2003). We affirm and preserve his claim of ineffective assistance of counsel for a possible postconviction relief application.

**Background Facts and Proceedings.**

On March 18, 2004, Abrahamson was arrested, and four days later on March 22, he was charged by trial information with two counts of possession of a precursor, lithium and pseudoephedrine. On November 2, 2005, the district court ordered those charges be dismissed with prejudice based on the failure to prosecute Abrahamson within one year of arraignment. *See* Iowa R. Crim. P. 2.33(2)(*c*).

Prior to that dismissal, however, on October 24, 2005, the State filed a separate trial information charging Abrahamson with ongoing criminal conduct, in violation of Iowa Code section 706A.2. This charge was supported by evidence which included the events that led up to his March 18, 2004 arrest, as well as events occurring on February 21, 2003 and April 22, 2003. After the district court denied Abrahamson's two motions to dismiss, which had asserted among other things double jeopardy violations, the parties entered into plea negotiations. On February 27, 2006, a plea agreement was reached. Accordingly, the State dismissed the ongoing criminal conduct charge, a class "B" felony, and Abrahamson plead guilty to an amended trial information charging him with possession of pseudoephedrine, a class "D" felony. That information noted that the charge was based on events that occurred on March 18, 2004. The court

accepted the plea and Abrahamson requested immediate sentencing. The court entered judgment on the plea and sentenced Abrahamson to an indeterminate term of five years incarceration, to run concurrently to a separate sentence from a Marion County conviction.

Abrahamson appeals from this judgment, and has filed briefs both through counsel and pro se. Through counsel, Abrahamson contends that "as a matter of public policy the State should be barred from obtaining [a] plea of guilty to a charge that earlier had been dismissed with prejudice," along with a claim of ineffective assistance of counsel. In his separate pro se brief, Abrahamson alleges (1) his plea was involuntary, (2) counsel provided ineffective assistance, (3) the plea lacked a factual basis, and (4) the charges should have been dismissed on double jeopardy grounds.

**Pro Se Brief.**

Iowa Rule of Appellate Procedure 6.13(2) requires that any pro se brief be filed "within 15 days of service of the proof brief filed by their counsel." Such a brief filed beyond this time period "will not be considered by the court and no response by the State shall be required or allowed." Iowa R. App. P. 6.13(2). Here, counsel's proof brief was served and filed on November 9, 2006, while Abrahamson's pro se brief was not filed until January 29, 2007. No extensions of time appear in the record. Therefore, we do not address the issues raised in the pro se brief.

**Preservation of Error.**

The State claims Abrahamson has not preserved error to attack his guilty plea due to his failure to file a motion in arrest of judgment. Abrahamson claims

he is able to make this challenge directly because the court failed to adequately advise him that his failure to file a motion in arrest of judgment would bar him from later challenging issues regarding his guilty plea on appeal. In the alternative, he maintains counsel was ineffective in failing to file such a motion in arrest of judgment.

Iowa Rule of Criminal Procedure 2.8(2)(*d*) provides:

> *Challenging pleas of guilty.* The 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 so raise such challenges shall preclude the right to assert them on appeal.

Here, the court informed Abrahamson:

> You also have the right to file what we call a motion in arrest of judgment. This is a method and the only method you have of attacking this plea of guilty, but it has to be filed prior to sentencing.
>
> So that means if you're sentenced today, you will be waiving your right to have a PSI in front of me, you'll be waiving your right to request time for sentencing, and you'll be waiving your right to attack this plea of guilty. Do you want to waive all those rights and be sentenced today, is that my understanding?

The State concedes that the court "did not comply with the rule for explaining the necessity of filing a motion in arrest of judgment and the consequences of failing to do so." However, viewing the plea hearing in its entirety, we cannot say that the district court failed in its duty to convey the particulars of rule 2.8(2)(*d*). *See State v. Straw,* 709 N.W.2d 128, 132 (Iowa 2006) (holding the district court's "plain language" colloquy on failure to file a motion in arrest of judgment in whole conveyed the pertinent information and substantially complied with the requirements of rule 2.8(2)(*d*)). During a discussion about his appeal rights, Abrahamson acknowledged that by pleading

guilty, he "won't be able to challenge the conviction or the plea agreement" but that he still could challenge an unrelated sentencing issue. Given the court's statements to Abrahamson, outlining in "plain English" the consequences of the rule coupled with the clear indication of Abrahamson's understanding of the functioning of the rule, we find there was substantial compliance with rule 2.8(2)(*d*). *See id.*

**Ineffective Assistance of Counsel.**

Accordingly, Abrahamson's only remaining avenue to seek relief is under his alternative claim of ineffective assistance of counsel. Abrahamson may raise the ineffective assistance claim on direct appeal if he has reasonable grounds to believe the record is adequate to address the claim on direct appeal. Iowa Code § 814.7(2). If an ineffective-assistance-of-counsel claim is raised on direct appeal from the criminal proceedings, we may decide the record is adequate to decide the claim or may choose to preserve the claim for postconviction proceedings. Iowa Code § 814.7(3). Only in rare cases will the trial record alone be sufficient to resolve the claim on direct appeal. *State v. Atley,* 564 N.W.2d 817, 833 (Iowa 1997) (stating claims of ineffective assistance of counsel raised on direct appeal are ordinarily reserved for postconviction proceedings to allow full development of the facts surrounding counsel's conduct); *State v. Coil,* 264 N.W.2d 293, 296 (Iowa 1978). We believe the record does not adequately present the issue in this case, whether counsel was ineffective in allowing Abrahamson to plead guilty, and we therefore preserve this issue for a possible

postconviction relief application. *See State v. Ueding,* 400 N.W.2d 550, 553 (Iowa 1987).

**AFFIRMED.**