

IN THE COURT OF APPEALS OF IOWA

No. 9-969 / 09-0456
Filed December 30, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOEL ADNA HOLLINGSWORTH,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis,
District Associate Judge.

A defendant appeals his conviction and sentence for indecent exposure,
contending that his guilty plea was unknowing and involuntary. **CONVICTION
AND SENTENCE VACATED; CASE REMANDED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney
General, and Janet M. Lyness, County Attorney.

Considered by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

VAITHESWARAN, J.

Joel Hollingsworth pleaded guilty to indecent exposure, a serious misdemeanor. Iowa Code § 709.9 (2007). The district court adjudged him guilty and sentenced him to a jail term of 180 days, with all but seven days suspended, as well as supervised probation for two years. Two months later, the Sixth Judicial District Department of Correctional Services notified the district court that it had failed to impose a special sentence mandated by Iowa Code section 903B.2.¹ The court convened a second sentencing hearing at which defense counsel acknowledged Hollingsworth was subject to section 903B.2. The court “committed [Hollingsworth] to the custody of the director of the Iowa department of corrections for a period of ten years, with eligibility for parole as provided in chapter 906.” This sentence was to be served upon completion of the originally-imposed sentence.

On appeal, Hollingsworth contends that “he was not properly informed that he would be subject to the special sentence provision of section 903B.2,” rendering his plea unknowing and involuntary under Iowa Rule of Criminal Procedure 2.8(2)(b).

¹ Section 903B.2 states in relevant part:

A person convicted of a misdemeanor or a class “D” felony offense under chapter 709, section 726.2, or section 728.12 shall also be sentenced, in addition to any other punishment provided by law, to a special sentence committing the person into the custody of the director of the Iowa department of corrections for a period of ten years, with eligibility for parole as provided in chapter 906. The special sentence imposed under this section shall commence upon completion of the sentence imposed under any applicable criminal sentencing provisions for the underlying criminal offense and the person shall begin the sentence under supervision as if on parole.
Iowa Code § 903B.2.

As a preliminary matter, the State argues that Hollingsworth did not preserve error on this issue. We disagree. While a defendant wishing to challenge the adequacy of a plea proceeding must normally file a motion in arrest of judgment according to Iowa Rule of Criminal Procedure 2.24(3)(a),

this requirement does not apply where a defendant was never advised during the plea proceedings, as required by rule 2.8(2)(d), that challenges to the plea must be made in a motion in arrest of judgment and that the failure to challenge the plea by filing the motion within the time provided prior to sentencing precludes a right to assert the challenge on appeal.

State v. Meron, 675 N.W.2d 537, 540 (Iowa 2004).

Hollingsworth was informed of his right to file a motion in arrest of judgment but was not advised that such a motion was necessary to preserve error on a challenge to his guilty plea. For that reason, we conclude Hollingsworth's failure to file the motion does not preclude Hollingsworth from challenging his guilty plea on appeal. See *id.* at 541.

We turn to the merits. Our review of the guilty plea proceeding is for correction of errors at law. *State v. Tate*, 710 N.W.2d 237, 239 (Iowa 2006).

The district court has a duty to ensure that a defendant understands the direct consequences of a plea. *Saadig v. State*, 387 N.W.2d 315, 324–25 (Iowa 1986). The special sentencing provision of Iowa Code section 903B.2, if applicable, is a direct consequence of the plea. *State v. Hallock*, 765 N.W.2d 598, 605 (Iowa Ct. App. 2009) (“We conclude this special sentencing provision is a part of Hallock’s sentence and is not merely collateral.”). Therefore, the district court had an obligation to inform Hollingsworth of this sentence. Iowa R. Crim. P. 2.8(2)(b)(2) (requiring district court to advise a defendant of “[t]he mandatory

minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered”); *Hallock*, 765 N.W.2d at 605–06.

The court did not advise Hollingsworth of this special sentence at the time he pleaded guilty. Effectively conceding this fact, the State argues that substantial compliance with Rule 2.8(2)(b) is all that is required. In its view, the written plea containing defense counsel’s certification that Hollingsworth fully understood the maximum penalty amounts to substantial compliance. See *State v. Kress*, 636 N.W.2d 12, 21 (Iowa 2001) (“Substantial—not strict—compliance with the rule is all that is required.”); *State v. Kirchoff*, 452 N.W.2d 801, 805 (Iowa 1990) (finding that although court did not discuss the mandatory minimum sentence and constitutional rights in the in-court colloquy, rule 2.8(2)(b) was substantially complied with because those provisions were covered in the written plea forms). The problem with this argument is that the written plea document specifies the original sentence but makes no mention of section 903B.2. While the State asks us to assume counsel raised section 903B.2 with Hollingsworth, we cannot do so given the Rule 2.8(2)(b)(2) requirement to advise a defendant of the “maximum possible punishment” and given the fact that section 903B.2 increased the time Hollingsworth was under the supervision of the department of corrections. See *Hallock*, 765 N.W.2d at 605 (“Application of the section could subject [the defendant] to additional imprisonment in excess of the maximum imprisonment to which he was sentenced for the underlying crime.”).

Because Hollingsworth was not advised of the special sentencing provision of Iowa Code section 903B.2, we conclude his plea was not voluntary

and intelligent as required by Iowa Rule of Criminal Procedure 2.8(2)(b). Accordingly, we vacate his conviction and sentence and remand for further proceedings.

CONVICTION AND SENTENCE VACATED; CASE REMANDED.