IN THE COURT OF APPEALS OF IOWA

No. 0-029 / 09-0567
Filed March 10, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RYAN MICHAEL MEEK,
Defendant-Appellant.

Appeal from the Iowa District Court for Story County, Steven P. Van Marel, District Associate Judge.

A defendant appeals the sentences imposed following his convictions for second offense domestic abuse assault causing bodily injury, possession of marijuana, and obstruction of emergency communications. **SENTENCES AFFIRMED IN PART, VACATED IN PART, AND REMANDED FOR RESENTENCING.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, Stephen Holmes, County Attorney, and Keisha F. Cretsinger, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

DOYLE, J.

On October 17, 2008, Ryan Meek assaulted his live-in girlfriend, with whom he has two young children. He was charged by trial information with, among other things, domestic abuse assault causing bodily injury in violation of Iowa Code sections 708.2A(1), (3)(b) (2007), possession of marijuana in violation of section 124.401(5), and obstruction of emergency communications in violation of section 727.5. The trial information alleged Meek had a prior conviction for domestic abuse assault.

Following the close of evidence at the jury trial, the district court asked Meek's attorney outside the presence of the jury whether Meek would stipulate to the prior domestic abuse assault conviction. Meek's attorney replied that "he would stipulate to the prior." The jury subsequently found Meek guilty of the charges listed above.

At the sentencing hearing, the State offered a copy of Meek's criminal history, which showed a prior conviction for domestic abuse assault, as an exhibit. The district court admitted the exhibit, with no objection from defense counsel. The court then sentenced Meek for domestic abuse assault causing bodily injury, second offense, to an indeterminate prison term not to exceed two years. On the possession of marijuana and obstruction of emergency communications convictions, the court sentenced Meek to two consecutive sentences totaling 210 days, to be served in the Story County Jail consecutive to the prison sentence for domestic abuse assault.

Meek appeals, challenging only the sentences imposed by the district court. He first claims the court erred in enhancing his sentence for domestic

abuse assault because it did not follow the procedure prescribed in Iowa Rule of Criminal Procedure 2.19(9) for considering prior convictions. He argues that his attorney's "pre-verdict indication that [he] 'would stipulate' to the prior did not meet the legal standard for establishing a voluntary and intelligent admission of the prior conviction."

Meek characterizes this issue as a sentencing error that may be raised at any time. *See State v. Gordon*, 732 N.W.2d 41, 43 (Iowa 2007) ("Because an illegal sentence is void, it can be corrected at any time."). The State disagrees, asserting that Meek's claim does not implicate an illegal sentence and is thus subject to the normal rules of error preservation. *See Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001) ("Iowa Rule of Criminal Procedure [2.24(5)(*a*)], and our cases, allow challenges to *illegal* sentences at any time, but they do not allow challenges to sentences that, because of procedural errors, are illegally *imposed*."); *State v. Thomas*, 520 N.W.2d 311, 313 (Iowa Ct. App. 1994) ("Generally, issues not raised in the trial court may not be raised for the first time on appeal."). We agree with the State.

Rule 2.19(9) sets forth the process that must be followed for bringing prior convictions to the court's attention. By its terms, the process takes place "prior to pronouncement of sentence." Iowa R. Crim. P. 2.19(9). Because Meek is challenging the procedure the court followed before sentencing him, he cannot raise the challenge at any time.[1] *Compare Tindell*, 629 N.W.2d at 360 (stating a

[1] We note that while Meek's challenge asserts the court's colloquy with him regarding his prior conviction was not adequate, he does not claim his sentence is in excess of that authorized by law and thus outside the jurisdiction of the court to impose.

defective sentencing procedure does not constitute an illegal sentence under rule 2.24(5)(*a*)), *with Gordon*, 732 N.W.2d at 44 (determining defendant was challenging an illegal sentence where his prior convictions were not sufficient to classify him as a habitual offender).

Anticipating this conclusion, Meek alternately contends we may analyze the issue as an ineffective-assistance-of-counsel claim. We agree. *See State v. Lucas*, 323 N.W.2d 228, 232 (Iowa 1982) ("When a claim of ineffective assistance of counsel is made, we have allowed an exception to the general rule of error preservation.").

To establish a claim of ineffective assistance of counsel, Meek must show by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) the failure prejudiced him. *State v. McBride*, 625 N.W.2d 372, 373 (Iowa Ct. App. 2001). However, ineffective-assistance-of-counsel claims are generally best reserved for postconviction proceedings in order for a more complete record to be developed on various issues. *See State v. Bumpus*, 459 N.W.2d 619, 627 (Iowa 1990). We do not believe the record in this case is adequate to address whether defense counsel was ineffective in failing to challenge the sufficiency of the court's colloquy with Meek about his prior domestic abuse assault conviction. *See State v. Bruegger*, 773 N.W.2d 862, 872 n.2 (Iowa 2009) (noting evidence regarding whether defense counsel adequately informed defendant of the consequences of stipulating to a prior juvenile adjudication "could be a significant part of our prejudice analysis" and reserving

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He also makes no claim that his prior conviction would not support the enhanced sentence he received.

claim for postconviction relief). This claim is accordingly reserved for possible postconviction relief proceedings.

Meek next claims the district court erred in designating the county jail as the place of confinement for the sentences imposed on the possession of marijuana and obstruction of emergency communications convictions.[2] He argues that because the court ordered those two sentences to be served consecutive to his two-year indeterminate prison term for domestic abuse assault, he should have been placed in the custody of the director of the Iowa Department of Corrections for those sentences as well. *See* Iowa Code §§ 901.8, 903.4; *State v. Kapell*, 510 N.W.2d 878, 880 (Iowa 1994) (holding that under section 901.8, consecutive sentences are to be viewed as one continuous term of imprisonment for purposes of designating the proper place of confinement under section 903.4). The State agrees. We accordingly vacate Meek's sentences for possession of marijuana and obstruction of emergency communications and remand for resentencing on those two convictions. *See State v. Patterson*, 586 N.W.2d 83, 84 (Iowa 1998).

SENTENCES AFFIRMED IN PART, VACATED IN PART, AND REMANDED FOR RESENTENCING.

[2] Meek sought discretionary review of the simple misdemeanor conviction for obstruction of emergency communications, which was granted by our supreme court. *See* Iowa Code § 814.6(2)(d).