

IN THE COURT OF APPEALS OF IOWA

No. 0-557 / 09-1802
Filed August 25, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRANDON ROBERT FRY,
Defendant-Appellant.

Appeal from the Iowa District Court for Union County, Sherman W. Phipps
(guilty pleas) and Martha L. Mertz (sentencing), Judges.

Defendant appeals his convictions and sentencing following guilty pleas.
**CONVICTIONS AFFIRMED; SENTENCES VACATED AND REMANDED FOR
RESENTENCING.**

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

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney
General, and Timothy R. Kenyon, County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.
Tabor, J., takes no part.

EISENHAUER, J.

Pursuant to a plea agreement resolving two criminal cases, Brandon Fry pled guilty to one count of third-offense possession of methamphetamine and one count of driving while barred. The court sentenced Fry to consecutive terms of five years on the methamphetamine charge and two years on the driving charge. Fry appeals arguing: (1) his pleas were not knowing and voluntary; and (2) the sentencing court “did not provide reasons for its decision to impose consecutive sentences.” We affirm Fry’s convictions and remand for resentencing.

I. Guilty Plea Challenge—Error Preservation.

We review Fry’s claim of error in his guilty plea proceeding for errors at law. See *State v. Meron*, 675 N.W.2d 537, 540 (Iowa 2004). The State initially claims Fry did not preserve error because he failed to file a motion in arrest of judgment as required by Iowa Rule of Criminal Procedure 2.24(3)(a): “A defendant’s failure to challenge the adequacy of a guilty plea proceeding by motion in arrest of judgment shall preclude the defendant’s right to assert such challenge on appeal.”

It is undisputed Fry did not file a motion in arrest of judgment. Fry contends this is not fatal to his appeal:

[T]his requirement does not apply where a defendant was never advised during the plea proceeding, 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.

Meron, 675 N.W.2d at 540. Fry argues the court did not inform him that failure to file the motion “would bar him from challenging the pleas on appeal.” We therefore examine whether the court advised Fry of the consequences of failing to file a motion in arrest of judgment. We utilize a “substantial compliance standard” as we determine whether the trial court discharged its duty. See *State v. Straw*, 709 N.W.2d 128, 132 (Iowa 2006). “The court must ensure the defendant understands the necessity of filing a motion to challenge a guilty plea and the consequences of failing to do so.” *Id.* The trial court is not required to quote Iowa Rule of Criminal Procedure 2.8(2)(d) verbatim; rather, it can use “plain English to explain the motion in arrest of judgment.” *Id.*

Following Fry’s guilty pleas, the trial court told him:

Mr. Fry, it’s my duty to advise you that if you decide to challenge your guilty pleas, or your guilty plea in either one of these cases, based on any alleged defects or mistakes made in these plea proceedings, you must do that by filing a motion in arrest of judgment. That motion must be filed not later than 45 days after today’s plea and at least 5 days before the date set for sentencing. The date we just set for sentencing is August 28, 2009.

In your motion you must set forth why the plea is not correct, and unless you do so, as to either one of these pleas, you will be precluded from attacking . . . either one of the guilty pleas you just entered.

Your attorney can inform you further as to your rights to file that motion in arrest of judgment. Since we set sentencing for August 28th, 2009, your motion in arrest of judgment, if you were going to file one, would have to be filed no later than . . . August 24, 2009. I’ll let your counsel look at the calendar with you and verify that date.

We conclude the trial court's statement was sufficient to discharge its duty. The court explained what a motion in arrest of judgment is, explained how to file the motion, and explained the time deadlines. Importantly, the court told Fry unless he filed the motion, "you will be precluded from attacking . . . either one of the guilty pleas you just entered." The court's statement conveyed the pertinent consequences and substantially complied with the requirements of Iowa Rule of Criminal Procedure 2.8(2)(d). Accordingly, Fry's failure to move in arrest of judgment bars a challenge to the adequacy of the guilty plea proceedings. See *id.*

II. Consecutive Sentences.

Fry argues the court did not give sufficient reasons for its decision to impose consecutive sentences and requests a remand for resentencing. The State "agrees the current record is not sufficient to review the district court's exercise of discretion to impose consecutive sentences."

We review the trial court's discretionary action in sentencing for an abuse of discretion. *State v. Delaney*, 526 N.W.2d 170, 178 (Iowa Ct. App. 1994). "[T]he duty of a sentencing court to provide an explanation for a sentence includes the reasons for imposing consecutive sentences." *Id.* This explanation must provide enough detail to permit review of the court's discretionary action. *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989).

After reviewing the record, we agree additional explanation concerning the decision to impose consecutive sentences is needed to enable judicial review. Therefore, we remand for resentencing. See *State v. Jacobs*, 607 N.W.2d 679,

690 (Iowa 2000) (remanding where court did not provide reasons for consecutive sentence decision).

**CONVICTIONS AFFIRMED; SENTENCES VACATED AND CASE
REMANDED FOR RESENTENCING.**