IN THE COURT OF APPEALS OF IOWA

No. 1-349 / 10-1157
Filed June 29, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ALIZABETH JOANNA BRAMMEIER,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Deborah Minot, District Associate Judge.

A defendant appeals from her driving while barred and driving while revoked convictions. **AFFIRMED.**

Rachel C.B. Antonuccio of Cole & Vondra, L.L.P., Iowa City, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Janet M. Lyness, County Attorney, and Michael Brennan, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., Vaitheswaran, J., and Huitink, S.J.* Tabor, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

VOGEL, P.J.

On January 21, 2010, Alizabeth Brammeier filed a written plea of guilty to: (Count I) driving while barred in violation of Iowa Code section 321.561 (2009), an aggravated misdemeanor; and (Count II) driving while revoked in violation of Iowa Code section 321J.21, a serious misdemeanor. *See* Iowa R. Crim. P. 2.8(2)(*b*) (providing that a court may accept a written guilty plea in serious and aggravated misdemeanor cases). On June 10, 2010, a hearing was held and the district court sentenced Brammeier to a term of imprisonment not to exceed two years on Count I and 365 days in jail on Count II. Those sentences were ordered to be served concurrently, but following an operating while intoxicated sentence she was currently serving on a Linn County conviction. Brammeier appeals and asserts that her trial counsel was ineffective[1] for failing to file a motion in arrest of judgment because her written guilty plea did not fully inform her of the

[1] In her brief, Brammeier has two argument sections. In the first section, she states that the trial court erred in accepting her guilty plea. Generally, error is not preserved unless a defendant files a motion in arrest of judgment as required by Iowa Rule of Criminal Procedure 2.24(3)(*a*). Her written guilty plea acknowledged that she had been advised of her right to challenge her guilty plea by filing a motion in arrest of judgment. Her attorney also filed a statement stating, "I have carefully explained to the defendant the procedural steps of filing a Motion in Arrest of Judgment, the definition and grounds thereof and the time within which such Motion should be filed." *See State v. Barnes*, 652 N.W.2d 466, 468 (Iowa 2002) ("[D]efendants charged with serious or aggravated misdemeanors may enter into a valid written waiver of the right to file a motion in arrest of judgment and thus trigger the bar that rule 2.24(3)(*a*) imposes to challenging a guilty plea on appeal."). Further, Brammeier does not argue error was preserved because she was not advised as required by Iowa Rule of Criminal Procedure 2.8(2)(*d*). Rather, she argues that error was preserved because her trial counsel was ineffective.

In the second section, she argues that trial counsel was ineffective for failing to file a motion in arrest of judgment to challenge her guilty plea. *See State v.* Straw, 709 N.W.2d 128, 133 (Iowa 2006) (explaining that a guilty plea may be challenged where the failure to file a motion in arrest of judgment resulted from ineffective assistance of counsel). Therefore, we analyze her claim under an ineffective-assistance-of-counsel context.

consequences of pleading guilty, as required by Iowa Rule of Criminal Procedure 2.8(2)(*b*).

We review Brammeier's ineffective-assistance-of-counsel claim de novo. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006).

> An ineffective-assistance-of-counsel claim in a criminal case "need not be raised on direct appeal from the criminal proceedings in order to preserve the claim for postconviction relief purposes." The defendant may raise the ineffective assistance claim on direct appeal if he or she has reasonable grounds to believe the record is adequate to address the claim on direct appeal. 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. Only in rare cases will the trial record alone be sufficient to resolve the claim on direct appeal.

Id.

> Generally, a criminal defendant waives all defenses and objections to the criminal proceedings by pleading guilty, including claims of ineffective assistance of counsel. One exception to this rule involves irregularities intrinsic to the plea—irregularities that bear on the knowing and voluntary nature of the plea.

Castro v. State, 795 N.W.2d 789, 792 (Iowa 2011). To establish a claim of ineffective assistance of counsel, a defendant must demonstrate (1) her trial counsel failed to perform an essential duty, and (2) this failure resulted in prejudice. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). In the context of a guilty plea, an ineffective-assistance-of-counsel claim is heavily tied to the prejudice prong. *Castro*, 795 N.W.2d at 793. For instance, Brammeier could not have actual knowledge[2] of the information she contends was omitted from her

[2] The record is unclear as to whether Brammeier was actually advised of the maximum penalty for a serious misdemeanor. Brammeier signed a statement that her plea was made knowingly, intelligently, and voluntarily and she knew and understood the

written guilty plea and must show that had she known of the penalty, she would not have pleaded guilty. *Straw*, 709 N.W.2d at 137; *see Castro*, 795 N.W.2d at 793 (explaining that a defendant must show that but for the breach of duty by counsel, the guilty plea would not have been entered.).

Brammeier contends her guilty plea was not knowing and intelligent because her written guilty plea did not state three things: (1) the maximum and minimum sentence for driving while revoked, (2) the possibility she could be sentenced to consecutive sentences, and (3) the immigration consequences of pleading guilty. We find the record is adequate to reach her claim and that she cannot establish prejudice as a matter of law.

Brammeier's first argument is that the written guilty plea did not demonstrate she was informed of the penalty for driving while revoked. Brammeier pleaded guilty to a serious misdemeanor (driving while revoked) and an aggravated misdemeanor (driving while barred). Her written guilty plea stated the penalty for both levels of offenses, but only the box next to the aggravated misdemeanor was checked. The district court sentenced her to concurrent sentences of one year in jail for the serious misdemeanor and two years imprisonment for the aggravated misdemeanor—a total sentence of two years imprisonment. Even if Brammeier was unaware of the penalty for the serious misdemeanor, the incarceration portion of that sentence was less than the one she was fully informed of and received for the aggravated misdemeanor. In order to prevail on her ineffective-assistance-of-counsel claim, she must

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maximum possible penalty, and Brammeier's attorney signed a statement that the maximum penalty had been explained to Brammeier.

essentially argue that she would not have pleaded guilty because the penalty for the serious misdemeanor is *less* than the total incarceration sentence she received. *See Straw*, 709 N.W.2d at 137 (explaining that where a defendant has already admitted to committing the crime and pleaded guilty, in order to establish prejudice the defendant must show that had they been told of the maximum punishment the defendant would not have pleaded guilty). We find this is simply not a credible argument and there is no likelihood that she could prevail. Because the sentences were ordered to be served concurrently, she cannot establish prejudice.

In addition to the incarceration, the district court ordered but suspended the $625 fine on the aggravated misdemeanor; it imposed a $1000 on the simple misdemeanor. Brammeier asserts that she was only informed of the maximum and minimum penalty of an aggravated misdemeanor, yet she was pleading guilty to two separate criminal acts. She should then have anticipated even the minimum fine under the aggravated misdemeanor would be doubled, from $625 to $1250. Again, the fine imposed was less than what could have been imposed if both acts were aggravated misdemeanors, and therefore Brammeier cannot demonstrate she was prejudiced by her counsel's performance.

Brammeier's second argument is that the written guilty plea did not state she could be sentenced to consecutive sentences.[3] However, she was clearly

[3] In the conclusion portion of her brief, Brammeier also states that she was not notified "that any imposed sentence could be ordered to be served consecutively to the prison sentence she was currently serving for an OWI Third." This random statement is insufficient to raise an issue for our consideration. *State v. Mann*, 602 N.W.2d 785, 788 n.1 (Iowa 1999) (citing *Soo Line R.R. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 689 (Iowa 1994) (holding that random mention of an issue, without elaboration or supporting authority, is insufficient to raise issue for appellate court's consideration)). Nevertheless,

not sentenced to consecutive sentences, but rather concurrent sentences. She cannot establish prejudice on a sentencing term that was not imposed.

Brammeier's third argument is that the written guilty plea did not inform her of the possible immigration consequences of pleading guilty. Iowa Rule of Criminal Procedure 2.8(2)(*b*) provides that "the defendant shall sign a written document that includes a statement that conviction of a crime may result in the defendant's deportation or other adverse immigration consequences *if the defendant is not a United States citizen*." (Emphasis added.) Brammeier readily acknowledges that she is a United States citizen and the convictions do not subject her to deportation. Consequently, her attorney owed her no duty to inform her of nonexistent immigration consequences. We find this argument to be totally without merit, if not frivolous.

We affirm Brammeier's judgment and sentence.

AFFIRMED.

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we find no requirement that a defendant be informed that the sentence being imposed will be served following a sentence the defendant is already serving for a separate and prior crime. *Cf.* Iowa R. Crim. P. 2.8(2)(*b*)(2) (providing that a defendant shall be informed 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*" (emphasis added)).