

IN THE COURT OF APPEALS OF IOWA

No. 2-545 / 11-1664
Filed August 8, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MOKOTSI BUTARE RUKUNDO,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Nancy A. Baumgartner, Judge.

A defendant appeals his judgment and sentence for a drug tax stamp violation, claiming (1) counsel was ineffective in not properly advising him of the immigration consequences associated with his guilty plea and (2) the court erred in accepting his flawed plea. **AFFIRMED.**

Amy L. Evenson of Larson & Evenson, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, Janet M. Lyness, County Attorney, and Meredith Rich-Chappell, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

VAITHESWARAN, P.J.

Mokotsi Rukundo pleaded guilty to a drug tax stamp violation. The district court deferred judgment and placed Rukundo on probation. The State later asserted that Rukundo violated the terms of probation. The State applied for an order adjudicating him guilty of the underlying offense and imposing an appropriate sentence.

Rukundo stipulated to the probation violation and consented to an adjudication of guilt. He requested immediate sentencing. The district court sentenced Rukundo to a prison term not exceeding five years. The court suspended the sentence and placed him on supervised probation.

On appeal, Rukundo contends: (1) he “received ineffective assistance of counsel when he was not properly notified of the immigration consequences associated with his guilty plea” and (2) “the trial court erred in accepting [his] flawed plea.” Rukundo concedes that the second issue, like the first, is being raised under an ineffective-assistance-of-counsel rubric because he did not file a motion in arrest of judgment to challenge his plea. See Iowa R. Crim. P. 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.”); *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).

Rukundo and the State agree the record is inadequate to decide the first issue on direct appeal. See *State v. Fountain*, 786 N.W.2d 260, 263 (Iowa 2010) (noting that if a record is inadequate to decide an ineffective-assistance-of-

counsel claim on direct appeal, it may be raised in a postconviction action). Although Rukundo asserts that he was arrested by Immigration Customs Enforcement in mid-2011 allegedly based on mandatory deportation procedures, our record lacks any evidence of Rukundo's immigration status or the deportation procedures. A postconviction relief action is the proper avenue to obtain such a record. Accordingly, we preserve that issue for postconviction relief proceedings.

With respect to the second issue, the State contends the district court made an adequate record on immigration consequences and that record would allow us to reject the issue on direct appeal. Because the second issue flows directly from the first, we elect to preserve it for postconviction relief proceedings. See *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002) (noting we generally preserve ineffective-assistance-of-counsel claims for postconviction relief proceedings "where an adequate record of the claim can be developed and the attorney charged with providing ineffective assistance may have an opportunity to respond to defendant's claims").

AFFIRMED.