

IN THE COURT OF APPEALS OF IOWA

No. 2-591 / 11-0084
Filed July 25, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOSE DANIEL SANCHEZ-PEREZ,
Defendant-Appellant.

Appeal from the Iowa District Court for Webster County, William C. Ostlund, Judge.

Defendant appeals the district court's denial of his motion to correct an illegal sentence. **AFFIRMED.**

Douglas Cook, Jewell, for appellant.

Jose Sanchez-Perez, Coralville, pro se.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, and Ricki N. Osborn, County Attorney, for appellee.

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

EISENHAUER, C.J.

In June 2010, Jose Sanchez-Perez filed a motion to dismiss the State's trial information. The district court denied relief. The State and Sanchez-Perez entered into a plea agreement, and the court accepted his plea of guilty. On August 23, 2010, Sanchez-Perez was sentenced in accordance with the plea agreement.

In December 2010, Sanchez-Perez filed a pro se motion for correction of an illegal sentence. In January 2010, the court ruled the sentence imposed was not illegal and Sanchez-Perez's right to appeal his conviction had expired.

In this appeal, Sanchez-Perez acknowledges the "guilty plea and sentence were done correctly and pursuant to plea agreement." However, his "appeal should be considered as a request to file a claim for postconviction relief" because trial counsel was ineffective in that Sanchez-Perez "did not understand that by pleading guilty, he could not challenge the denial of his motion to dismiss." Sanchez-Perez seeks further development of the record.

The State notes Sanchez-Perez is not required to obtain an appellate court's permission to raise his claim of ineffective assistance of counsel for the first time in postconviction proceedings. We agree. See *State v. Johnson*, 784 N.W.2d 192, 198 (Iowa 2010) (ruling where defendant did not seek to have ineffective-assistance claim resolved on direct appeal, issue was preserved for postconviction relief proceeding). Further, the State "does not object to Sanchez-Perez's request the reviewing court preserve his ineffective-assistance-of-counsel claim for postconviction proceedings."

We affirm the district court's order and preserve Sanchez-Perez's ineffective-assistance-of-counsel claim for possible postconviction proceedings.

AFFIRMED.