

IN THE COURT OF APPEALS OF IOWA

No. 2-606 / 11-1880
Filed August 8, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MARIO SANTAMARIA,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Todd Hensley,
District Associate Judge.

Defendant appeals following his guilty plea to operating while intoxicated,
habitual offender, claiming ineffective assistance of counsel. **AFFIRMED.**

Martha M. McMinn, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant
Attorney General, Patrick Jennings, County Attorney, and Shelly Edmundson,
Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

VOGEL, P.J.

Mario Santamaria appeals following his guilty plea to operating while intoxicated, habitual offender, in violation of Iowa Code sections 321J.2 and 902.8 (2011), claiming counsel rendered ineffective assistance during his plea hearing. We affirm his conviction but preserve his ineffective-assistance-of-counsel-claim for possible postconviction relief.

On February 14, 2011, Santamaria was arrested for operating while intoxicated following a police chase and single-vehicle accident. Santamaria entered a guilty plea on November 7, 2011. The district court conducted a thorough colloquy with Santamaria to ensure he understood the nature of the plea proceedings, the possible punishments involved, and the fact there was no plea agreement with the State. Santamaria was informed of the possible punishments applicable and the rights he was relinquishing in pleading guilty. Santamaria provided the court with the factual basis to support the guilty plea to the operating-while-intoxicated charge and admitted to having four prior operating-while-intoxicated convictions. He also admitted to two prior felony convictions making him an habitual offender under section 902.8. The court then accepted Santamaria's plea of guilty.

Santamaria wished to be sentenced two days after the plea hearing, so the court advised him of his right to file a motion in arrest of judgment and his waiver of that right considering he wished to proceed to sentencing in two days. At the close of the record, the court stated:

THE COURT: Okay. Mr. Santamaria, before we close the record, anything or any questions you have at this point?

THE DEFENDANT: Well, the only reason I'm pleading guilty to, Your Honor

[DEFENSE COUNSEL]: Just a moment.

THE COURT: Remember, it's not sentencing time, Mr. Santamaria. I'm just asking you if you have any questions.

THE DEFENDANT: No, Your Honor.

THE COURT: Okay. All right. We will see everybody here on Wednesday. Thank you all and we are in recess.

On appeal, Santamaria claims his statement above, which defense counsel interrupted, should have put his counsel and the court on notice that his guilty plea was conditioned on "something." In addition, he claims "it is highly probable that he would not have pleaded guilty had he known that whatever condition he had in mind would not be fulfilled." Santamaria gives no indication what that "condition" was or might have been, nor does he demonstrate that this "condition" was not fulfilled. The State asserts Santamaria was only "attempting something akin to an allocution," and the interruption was merely to inform him "that was a matter for the sentencing hearing." Because it could be read either way, the record on direct appeal is inadequate to address this claim; therefore, we must preserve the claim for possible postconviction relief proceedings. See *State v. Johnson*, 784 N.W.2d 192, 198 (Iowa 2010) (holding ineffective-assistance-of-counsel claims must be preserved for possible postconviction relief proceedings when the record is inadequate to address the claims, even when the claims are raised in "a general or conclusory manner on direct appeal"). We affirm his conviction but preserve his ineffective-assistance-of-counsel claim.

AFFIRMED.