

IN THE COURT OF APPEALS OF IOWA

No. 2-637 / 11-1959
Filed August 8, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL JOSEPH AMELIA,
Defendant-Appellant.

Appeal from the Iowa District Court for Madison County, Paul R. Huscher (plea hearing) and Gregory A. Hulse (sentencing hearing), Judges.

Defendant appeals his guilty plea to prohibited acts and violation of pseudoephedrine purchase restrictions, claiming ineffective assistance of counsel. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas Henry Miller, Assistant Attorney General, and Julie Forsyth, County Attorney, for appellee.

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

VOGEL, P.J.

Michael Amelia appeals following his guilty plea to one count of prohibited acts (manufacturing methamphetamine), in violation of Iowa Code section 124.401(1)(c)(6) (2009), and one count of violation of pseudoephedrine purchase restrictions, in violation of Iowa Code sections 126.23A and 124.213. Amelia asserts his counsel rendered ineffective assistance by allowing him to plead guilty and failing to file a motion in arrest of judgment after the court failed to advise him of the applicable mandatory minimum sentence. We affirm his conviction but preserve his ineffective-assistance claim for possible postconviction relief proceedings.

The State filed a trial information against Amelia charging him with two counts of prohibited acts (manufacturing methamphetamine) and one count of violation of pseudoephedrine purchase restrictions. The trial information also alleged Amelia was an habitual offender under section 902.8 and had been previously convicted of a controlled substances offense as required for the section 124.411 sentencing enhancement. As part of a plea agreement with the State, Amelia agreed to plead guilty to one count of manufacturing methamphetamine and one count of violation of pseudoephedrine purchase restrictions. In exchange, the State would dismiss the other manufacturing charge and also not seek the sentencing enhancements.

During the plea colloquy, the district court failed to advise Amelia of the applicable mandatory minimum period of confinement of one-third of the maximum indeterminate sentence under section 124.413. Amelia did not file a motion in arrest of judgment, which would normally preclude him from

challenging his guilty plea on appeal; however, he raises his challenge through the guise of ineffective assistance of counsel, which is the exception to the normal error preservation rules. See *State v. Kress*, 636 N.W.2d 12, 19 (Iowa 2001). Amelia asserts because the court failed to properly inform him of the applicable penalties, his plea was not knowing and voluntary, and thus, should be set aside to allow him to plead anew.

To prove ineffective assistance of counsel, Amelia must prove counsel failed to perform an essential duty and this resulted in prejudice. *Id.* at 20. The State concedes the district court failed to inform Amelia of the applicable mandatory minimum sentence and counsel was ineffective in failing to correct the court at the hearing or file a motion in arrest of judgment. However, the State asserts Amelia cannot prove he has been prejudiced by this error.

To establish prejudice in the context of a guilty plea, a defendant must show, “that there is a reasonable probability that, but for counsel’s errors, he or she would not have pleaded guilty and would have insisted on going to trial.” *State v. Straw*, 709 N.W.2d 128, 138 (Iowa 2006). The State points out that Amelia does not allege, much less prove, that he suffered prejudice as a result of counsel’s error in this case. While we agree with the State that Amelia has failed to allege prejudice in his brief, we find we must preserve his ineffective-assistance-of-counsel claim. See *State v. Johnson*, 784 N.W.2d 192, 198 (Iowa 2010) (holding ineffective-assistance-of-counsel claims must be preserved 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 therefore affirm

Amelia's conviction but preserve his ineffective-assistance-of-counsel claim for possible postconviction relief proceedings.

AFFIRMED.