

IN THE COURT OF APPEALS OF IOWA

No. 3-410 / 12-1482
Filed July 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

THOMAS BRYAN FRAZIER,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert,
Judge.

Thomas Bryant Frazier appeals his conviction for conspiracy to manufacture a controlled substance, in violation of Iowa Code section 124.401(1)(c)(6) (2011). **AFFIRMED.**

Andrea K. Buffington of McEnroe, Gotsdiner, Brewer & Steinbach, P.C.,
West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant
Attorney General, John Sarcone, County Attorney, and Steve Bayens, Assistant
County Attorney, for appellee.

Heard by Doyle, P.J., Bower, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

BOWER, J.

Thomas Bryant Frazier appeals his conviction for conspiracy to manufacture a controlled substance, in violation of Iowa Code section 124.401(1)(c)(6) (2011). Frazier argues the district court erred by failing to inquire, sua sponte, into a potential conflict of interest concerning his trial counsel. Because Frazier waived his conflict of interest argument by entering a guilty plea, we affirm.

I. Background Facts and Proceedings

Thomas Frazier was arrested following a traffic stop during which police uncovered a number of items commonly used to manufacture methamphetamine.¹ Along with Frazier, Roger Pierce and William Smith were charged. The individuals were Mirandized, and Frazier admitted to purchasing pseudoephedrine. All three occupants initially denied involvement in the manufacture of methamphetamine.

Frazier was charged by trial information with three crimes.² After pleading not guilty, Frazier agreed to plead guilty to the conspiracy charge. In exchange, the State agreed to dismiss the remaining charges against him. He was subsequently sentenced to an indeterminate term of incarceration not to exceed ten years and ordered to pay a fine, a surcharge, and fees.

Frazier timely filed this appeal and argues because his court-appointed attorney, Pam Summers, had previously represented Pierce in another, unrelated

¹ The items were discovered during a routine inventory search after police determined that none of the occupants could legally operate the car.

² All three charges, and the co-defendants, were included in a single trial information.

case, the district court had a duty to inquire into the possibility of a conflict of interest.

II. Standard of Review

As Frazier raises a constitutional claim, our review is de novo. *State v. Smith*, 761 N.W.2d 63, 68 (Iowa 2009).

III. Discussion

Frazier argues the district court had a duty to inquire, sua sponte, into his trial counsel's potential conflict of interest due to her prior representation of a co-defendant. This argument was not presented to the district court. Frazier argues the district court should have been aware of the conflict because Summers's name was listed on several documents attached to the minutes of testimony in Frazier's case.³ The State argues Frazier waived any conflict by pleading guilty.

A guilty plea, because it is itself a conviction, waives constitutional challenges which might undermine the conviction, with certain exceptions. See *Boykin v. Alabama*, 395 U.S. 238, 242 (1969); *State v. Mann*, 602 N.W.2d 785, 789 (Iowa 1999). The State has a right to expect the finality of that conviction. *Mann*, 602 N.W.2d at 789. Our supreme court has recognized five challenges which are not waived when a defendant pleads guilty. *State v. LaRue*, 619 N.W.2d 395, 397–98 (Iowa 2000). These include: (1) an insufficient trial information or facial constitutional vagueness of the statute, (2) an uninformed or involuntary plea, (3) a claim of double jeopardy, (4) a challenge to the sentencing

³ Pierce was charged as a habitual offender. Records showing his prior convictions were attached to the trial information and indicated Summers was Pierce's attorney during an earlier case.

statute, (5) a claim of ineffective assistance of counsel calling into question the voluntariness of the plea. *Id.* Frazier does not argue that the alleged conflict of interest falls into any of these specifically enumerated categories.

In *LaRue*, our supreme court examined a similar situation. Counsel was appointed to defend LaRue after he was charged with multiple crimes. *Id.* at 396. During the course of counsel's representation, counsel discovered a potential conflict due to prior representation of a co-defendant. *Id.* Counsel was allowed to withdraw and was appointed to represent the co-defendant. *Id.* The co-defendant was able to negotiate a favorable plea after agreeing to testify against LaRue. *Id.* LaRue entered a guilty plea. *Id.* at 396–97. On appeal, LaRue presented a conflict of interest claim. *Id.* at 397. The court examined the claim and determined, because the claim did not fall within one of the five exceptions, the argument was waived by the entry of the plea. *Id.* at 397–98.

The same is true here. Frazier entered a valid guilty plea and does not argue his claim falls into one of the exceptions to waive application of the rule. His argument amounts to a request that we create a per se rule that any potential conflict-of-interest claim survives a validly entered plea. We reject the request. A guilty plea taken in accordance with our rules of procedure waives all objections and defenses. *State v. Antenucci*, 608 N.W.2d 19, 19 (Iowa 2000). Having failed to argue the conflict of interest claim falls within one of the exceptions to this rule, Frazier has waived his argument.

AFFIRMED.