

**IN THE COURT OF APPEALS OF IOWA**

No. 7 023/ 05-2073  
Filed March 14, 2007

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**JAMES TRUMAN,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Palo Alto County, Nancy Whittenburg (plea) and Don E. Courtney (sentencing), Judges.

Defendant James Truman appeals from his conviction and sentence for sexual abuse in the third degree. **AFFIRMED.**

Patricia Reynolds, Acting State Appellate Defender, and Dennis D. Hendrickson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, and Peter C. Hart, County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

**EISENHAUER, J.**

Defendant-appellant James Truman was charged with six counts of third-degree sexual abuse, six counts of incest, and two counts of lascivious acts with a child, in violation of Iowa Code sections 709.4(2)(b), 726.2 and 709.8(1) (2005). Pursuant to a plea agreement, Truman pled guilty to one count of third-degree sexual abuse, and the State dismissed thirteen other charges. The district court accepted Truman's guilty plea after an extensive in-court colloquy. It also informed Truman that a motion in arrest of judgment must be timely filed to challenge the plea proceedings. The sentencing was set for September 9, 2005.

On August 30, 2005, Truman filed a motion in arrest of judgment, alleging his plea was involuntary. The district court overruled Truman's motion after a hearing. The district court entered judgment and sentenced Truman to a prison term not to exceed ten years on his conviction for sexual abuse in the third degree. Truman appeals.

The State argues Truman failed to preserve the error for our review. We agree. Iowa Rule of Criminal Procedural 2.24(3)(a) (2005) requires the filing of a motion in arrest of judgment to challenge a guilty plea on appeal. Rule 2.24(3)(b) sets the time limits to make the motion: "[t]he motion [in arrest of judgment] must be made not later than 45 days after plea of guilty, . . . but in any case not later than five days before the date set for pronouncing judgment." The language of Rule 2.24(3)(b) is unambiguous. It sets a forty-five-day outer limit for the motion to be filed. This forty-five-day period may be shortened, depending on the date of sentencing, because the motion must also be filed at least five days before the date set for pronouncing judgment. In the present

case, Truman's guilty plea was taken on July 15, 2005, and the sentencing was set on September 9, 2005. Truman had either forty-five days from July 15 or until five days before September 9 to file the motion, whichever occurred sooner. He filed the motion on August 30, 2005, which was the forty-sixth day after his guilty plea had been taken. Although the motion was filed more than five days before the date set for sentencing, it exceeded the forty-five-day outer limit. This filing was not timely. Therefore, error was not preserved, and Truman cannot challenge his guilty plea proceedings on appeal. We need not discuss the merits of Truman's claims in view of this conclusion.

**AFFIRMED.**