

IN THE COURT OF APPEALS OF IOWA

No. 8-072 / 07-0803
Filed March 14, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SOURISACK BATE PRASEUTH,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Cynthia Mosian,
Judge.

Sourisack Praseuth appeals his judgment and sentence following his plea
of guilty. **AFFIRMED.**

Patrick W. O'Bryan, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney
General, John P. Sarcone, County Attorney, and Raymond Blase, Assistant
County Attorney, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

EISENHAUER, J.

Sourisack Praseuth appeals his judgment and sentence following his plea of guilty to possession of cocaine and third-offense operating while intoxicated (OWI). He contends he should be allowed to withdraw his guilty plea because he was not personally informed of his right to file a motion in arrest of judgment. We review his claim for correction of errors at law. Iowa R. App. P. 6.4.

Iowa Rule of Criminal Procedure 2.8(2)(b) states that the court shall not accept a guilty plea without first determining that the plea is made voluntarily and intelligently.

The court shall inform the defendant that any challenges to a plea of guilty based on alleged defects in the plea proceedings must be raised in a motion in arrest of judgment and that failure to so raise such challenges shall preclude the right to assert them on appeal.

Iowa R. Crim. P. 2.8(2)(d). An in-person colloquy informing the defendant of the rights being waived is required for felony charges. Iowa R. Crim. P. 2.28(2); *State v. Moore*, 638 N.W.2d 735, 738 (Iowa 2002). For misdemeanors, a written waiver substantially complies with the court's duty to ensure a defendant is informed of his or her rights under rule 2.8(2)(b). Iowa R. Crim. P. 2.8(2)(b)(4).

Because the OWI charge was a felony, the court was required to personally inform Praseuth of his right to file a motion in arrest of judgment. It did not. However, failure by a judge to comply with this rule only operates to reinstate the defendant's right to appeal the legality of his plea. *State v. Oldham*, 515 N.W.2d 44, 46 (Iowa 1994). Praseuth fails to argue on appeal how his plea was illegal. Accordingly, he has waived the issue. See Iowa R. App. P. 6.14(1)(c) ("Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.").

Praseuth next contends his counsel was ineffective in failing to inform him of the necessity of filing a motion in arrest of judgment to challenge any defects in the plea proceedings. However, he does not allege how he was prejudiced by any failure. We therefore reject his claim. *Ledezma v. State*, 626 N.W.2d 134, 145 (Iowa 2001) (holding a defendant must prove both that counsel failed to perform an essential duty, and prejudice resulted therefrom).

AFFIRMED.