

IN THE COURT OF APPEALS OF IOWA

No. 8-178 / 07-1056
Filed May 14, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ERICKA ROBERTA BARNES,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Joel D. Novak (Disposition) and Michael D. Huppert (Sentencing), Judges.

Defendant appeals from her judgment and sentence for willful injury.

AFFIRMED.

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

Thomas J. Miller, Attorney General, Elisabeth Reynoldson, Assistant Attorney General, John P. Sarcone, County Attorney, and Frank Severino, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

VAITHESWARAN, J.

Fifteen-year-old Ericka Barnes was charged with a crime arising from the assault of a police officer following a high school basketball game. The juvenile court transferred jurisdiction to the district court for prosecution as a youthful offender. See *State v. Iowa Dist. Ct.*, 616 N.W.2d 575, 580 (Iowa 2000) (explaining youthful offender status and implications for sentencing). Following the transfer, Barnes pled guilty to willful injury resulting in serious injury. Iowa Code § 708.4(1) (2003).

The State concedes that, at the plea hearing, “the prosecutor incorrectly stated that the options available to the sentencing judge would include granting defendant a deferred judgment.” The district court acquiesced in this statement and defense counsel did not object or file a motion in arrest of judgment challenging the plea.

At sentencing, Barnes’s attorney offered the district court several sentencing options. One of his requests was to “defer the judgment in this matter and close this case.”¹ The court concluded a deferred judgment was not “an appropriate option.” The court instead deferred Barnes’s sentence² and granted her request for probation.

On appeal, Barnes argues her attorney was ineffective in failing to file a motion in arrest of judgment. She maintains her “plea was not knowing and voluntary, as the trial court misinformed her of the sentencing options she faced.”

¹ Iowa Code section 907.1(1) defines a deferred judgment as “a sentencing option whereby both the adjudication of guilt and the imposition of a sentence are deferred by the court.”

² A deferred sentence means the court enters an adjudication of guilt but does not impose a sentence. See Iowa Code § 907.1(2).

The State responds that Barnes did not establish *Strickland* prejudice. See *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674, 693 (1984) (requiring showing that (1) counsel breached an essential duty, and (2) prejudice resulted). We find the record inadequate to resolve this claim.

Barnes also makes the following agreement: “it appears that trial counsel gave defendant erroneous advice regarding eligibility for a deferred judgment and that defendant relied on this advice in waiving trial and pleading guilty.” This argument could be viewed as an independent ineffective-assistance-of-counsel claim. We also preserve this claim for postconviction relief proceedings, as there is no record on the nature of the advice Barnes received from her attorney.

We uphold Barnes’s conviction and sentence and preserve her ineffective-assistance-of-counsel claims for postconviction relief proceedings. See *State v. Straw*, 709 N.W.2d 128, 138 (Iowa 2006) (stating “In only rare cases will the defendant be able to muster enough evidence to prove prejudice without a postconviction relief hearing.”).

AFFIRMED.