IN THE COURT OF APPEALS OF IOWA

No. 8-182 / 07-1179
Filed March 26, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SEAN WILSON HOWELL,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, John C. Nelson, District Associate Judge.

Sean Wilson Howell appeals his conviction and sentence following his guilty plea. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Martha Lucey, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, and Patrick Jennings, County Attorney, for appellee.

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

BAKER, J.

Sean Wilson Howell appeals his conviction and sentence following his guilty plea for driving while barred. He challenges the voluntariness of his plea and seeks to plea anew. Because there was substantial compliance with the requirement that Howell be accurately informed of the consequences of his guilty plea, we affirm.

I. Background and Facts

On October 9, 2006, Sean Howell was observed driving. A police officer stopped him for an unrelated reason and ran a record check, which indicated Howell was barred from driving. The next day, Howell signed a written guilty plea, which stated in pertinent part:

> I know 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 raise such challenges shall preclude the right to assert them on appeal. I hereby waive my right to file a Motion in Arrest of Judgment.

On October 20, 2006, Howell was charged by trial information with driving while barred as a habitual offender in violation of Iowa Code section 321.561 (2005). On June 1, 2007, Howell was sentenced to his choice of either thirty days in jail or sixty days of electronic monitoring and given a suspended fine of $625. Howell appeals.

II. Merits

We review a claim of error in a guilty plea proceeding for correction of errors at law. *State v. Meron*, 675 N.W.2d 537, 540 (Iowa 2004). Although Howell's claim that his guilty plea was not made knowingly and intelligently has constitutional implications, because there is no factual dispute in this case our

review is at law. *State v. Allen*, 690 N.W.2d 684, 687 (Iowa 2005) (noting the court generally reviews constitutional claims de novo).

Generally, a defendant must file a motion in arrest of judgment to preserve a challenge to a guilty plea on appeal. Iowa R. Crim. P. 2.24(3)(*a*). Pursuant to Iowa Rule of Criminal Procedure 2.8(2)(*d*), a court is required to inform a defendant that challenges to a guilty plea "based on alleged defects in the plea proceedings must be raised in a motion in arrest of judgment and that failure to raise such challenges shall preclude the right to assert them on appeal." Pursuant to his guilty plea, Howell waived his right to file a motion in arrest of judgment. He concedes that, through his guilty plea to an aggravated misdemeanor, he waived the in-court colloquy normally required by Iowa Rule of Criminal Procedure 2.8(2)(*b*). He contends, however, that he was not informed of the *time limits* for filing a motion in arrest of judgment. Therefore, he argues, because he was not satisfactorily informed of the requirements of rule 2.24(3)(*a*), his failure to file a motion in arrest of judgment does not preclude him from challenging his guilty plea on appeal.

Despite the fact that Howell waived his right to file a motion in arrest of judgment, he was clearly advised in his written guilty plea of the requirement to challenge any defects in his plea to preserve such defects for appeal. We are aware of no rule that requires the defendant to be informed of the time limit for filing a motion in arrest of judgment. We find there was substantial compliance with rule 2.8(2)(*d*). Because Howell did not file a motion in arrest of judgment, he did not preserve a challenge to his guilty plea for appeal.

Even if a challenge to his guilty plea were preserved, we find there was substantial compliance with the requirement that Howell be "accurately informed with respect to the consequences of his guilty plea." *State v. Myers*, 653 N.W.2d 574, 578 (Iowa 2002) (citation omitted).

> The Due Process Clause requires that a guilty plea be voluntary. To be truly voluntary, the plea must not only be free from compulsion, but must also be knowing and intelligent. Consequently, a defendant must be aware not only of the constitutional protections that he gives up by pleading guilty, but he must also be conscious of the nature of the crime with which he is charged and the potential penalties.

State v. Loye, 670 N.W.2d 141, 150-51 (Iowa 2003) (citations omitted). "[T]he court must inform the defendant of and determine that the defendant understands '[t]he mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered.'" *State v. Kress*, 636 N.W.2d 12, 21 (Iowa 2001) (quoting Iowa R. Crim. P. 8(2)(*b*)(2)). We apply a substantial compliance standard to determine whether a defendant has been accurately informed of the consequences of a guilty plea. *Myers*, 653 N.W.2d at 578. "[I]t is sufficient that the defendant be informed of his rights in such a way that he is made aware of them." *Id.*

Howell contends that his written guilty plea did not substantially comply with the court's obligation to inform him of the minimum and maximum penalties. Howell's written guilty plea incorrectly stated the minimum mandatory fine as $500, and the maximum as $5000. These amounts were incorrect because the minimum and maximum fines for an aggravated misdemeanor were raised to $650 and $6250 effective July 1, 2006. Iowa Code § 903.1(2), *amended by* 2006 Acts ch. 1166, § 11. The trial court did err in accepting a guilty plea that advised

the defendant of the wrong range of possible fines. This error, however, was harmless. *See, e.g.*, *State v. Matlock*, 304 N.W.2d 226, 228 (Iowa 1981) (affirming the sentence imposed by the trial court where the error did not harm the defendant and a remand for resentencing would not result in a changed sentence). Howell's $650 fine was within the range stated in his guilty plea. Further, the fine was suspended. We find there was substantial compliance with the requirement that Howell be "accurately informed with respect to the consequences of his guilty plea." *Myers*, 653 N.W.2d at 578.

AFFIRMED.