

**IN THE COURT OF APPEALS OF IOWA**

No. 8-415 / 07-0848  
Filed July 30, 2008

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

**vs.**

**MICHAEL DEE DAMERVILLE,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, William A. Price,  
District Associate Judge.

Defendant appeals his guilty pleas to domestic abuse assault and  
possession of marijuana. **AFFIRMED.**

Matthew Boles of Parrish, Kruidenier, Dunn, Boles, Gribble, Cook, Parrish,  
Gentry & Fisher, L.L.P., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Michael Salvner, Assistant  
County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink, J., and Schechtman, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

**SCHECHTMAN, S.J.****I. Background Facts & Proceedings**

On April 26, 2007, Michael Damerville was charged with domestic abuse assault causing bodily injury based on an incident which occurred on August 31, 2003. A warrant for Damerville's arrest had been issued on September 4, 2003, but he had absconded. Damerville was also charged with possession of a controlled substance (marijuana), third offense, based on a police officer's observations on April 18, 2007, while serving a warrant on the assault charge occurring in 2003.

Damerville filed a motion to dismiss the charge of domestic abuse assault, claiming the trial information had not been filed within three years after the commission of the incident, as required by Iowa Code section 802.3 (2003). He also filed a motion to suppress the seized marijuana because the assault warrant was for a charge beyond the statute of limitations and not valid.

Before the district court ruled on Damerville's motions, he entered a plea of guilty to the charges on May 4, 2007. The written guilty plea acknowledged "I am knowingly and intelligently pleading guilty . . . because I am guilty." For a factual basis, he admitted that he pushed the victim on August 31, 2003, causing a bruise, in Polk County; he admitted knowingly possessing marijuana on April 18, 2007, in Polk County. Damerville waived his right to file a motion in arrest of judgment and requested immediate sentencing. He also specifically withdrew the motion to dismiss the charge of domestic abuse assault. He was sentenced to 120 days in the county jail on each charge, to be served concurrently.

Damerville now appeals his pleas of guilty.

## **II. Ineffective Assistance of Counsel**

Damerville alleges ineffective assistance of counsel during the guilty plea proceedings. We review claims of ineffective assistance of counsel de novo. *State v. Bergmann*, 600 N.W.2d 311, 313 (Iowa 1999). To establish a claim of ineffective assistance of counsel, a defendant must show (1) the attorney failed to perform an essential duty, and (2) prejudice resulted to the extent it denied defendant a fair trial. *State v. Shanahan*, 712 N.W.2d 121, 136 (Iowa 2006). Absent evidence to the contrary, we assume the attorney's conduct falls within the wide range of reasonable professional assistance. *State v. Hepperle*, 530 N.W.2d 735, 739 (Iowa 1995).

A defendant who pleads guilty waives all claims of ineffective assistance of counsel, except those relating to the knowing and voluntary nature of the plea.<sup>1</sup> *Manning v. State*, 654 N.W.2d 555, 561 (Iowa 2002); *State v. LaRue*, 619 N.W.2d 395, 398 (Iowa 2000). A defendant may not, through the guise of a claim of ineffective assistance of counsel, challenge a guilty plea on a ground not involving the knowing and voluntary nature of the plea. *Speed v. State*, 616 N.W.2d 158, 159 (Iowa 2000). A guilty plea may be challenged by claiming irregularities intrinsic to the plea itself. *Wise v. State*, 708 N.W.2d 66, 70 (Iowa 2006).

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<sup>1</sup> There are three other valid challenges, not present in this appeal: (1) insufficient trial information or facial constitutional vagueness of the subject statute; (2) claim of double jeopardy; and (3) a challenge of the sentencing statute. *State v. LaRue*, 619 N.W.2d 395, 397 (Iowa 2000).

Damerville asserts he received ineffective assistance because his counsel permitted him to plead guilty before receiving rulings on the motion to dismiss and to suppress. These motions were filed just two days prior to the pleas. A challenge to a guilty plea based on statute of limitations grounds is not intrinsic to the plea itself. *State v. Burgess*, 639 N.W.2d 564, 567 (Iowa 2001). The statute of limitations is an affirmative defense that is waived by entry of a guilty plea. *State v. Cole*, 452 N.W.2d 620, 622 (Iowa Ct. App. 1989). Thus, we conclude that Damerville's claim of ineffective assistance of counsel, based on the statute of limitations, was waived by the entry of the guilty pleas.

### **III. Knowing and Voluntarily Made**

Damerville contends his guilty plea was not made knowingly and was not voluntary because he was not informed by the district court that he had a possible statute of limitations defense. A claim that a guilty plea was not knowingly entered and voluntary raises constitutional implications under the due process clause of the Fourteenth Amendment. *State v. Thomas*, 659 N.W.2d 217, 220 (Iowa 2005). On constitutional claims our review is de novo. *State v. Sayre*, 566 N.W.2d 193, 195 (Iowa 1997).

The three-year statute of limitations does not run when the party charged "was not publicly resident within the state." Iowa Code § 802.6(1). The record reflects that Damerville had absconded from probation supervision effective November 17, 2003. The merits of the motion to dismiss were never reached, but that fact would detract from its merits. The sentencing court's obligation is to comply with Iowa Rule of Criminal Procedure 2.8, "determining that the plea is

made voluntarily and intelligently and has a factual basis.” See *State v. Kirchoff*, 452 N.W.2d 801, 803-04 (Iowa 1990). There is no need for the sentencing court to address a litany of defenses, including any limitations issue.

Notwithstanding, under Iowa Rule of Criminal Procedure 2.24(3)(a), a defendant must generally file a motion in arrest of judgment to preserve a challenge to a guilty plea on appeal. Damerville signed a written guilty plea form which stated, “[b]y seeking immediate sentencing, I give up my right to attack this guilty plea by filing a Motion in Arrest of Judgment under Iowa Rule of Criminal Procedure 2.24(3).”

On appeal, Damerville offers no argument that his waiver of the right to file a motion in arrest of judgment was invalid. “Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.” Iowa R. App. P. 6.14(1)(c). We have been presented with no grounds in this appeal which would permit us to conclude the waiver of his right to file a motion in arrest of judgment should be annulled.

We conclude that because Damerville did not file a motion in arrest of judgment, he may not now challenge the guilty plea on appeal. See Iowa R. Crim. P. 2.24(3)(a).

We affirm the decision of the district court.

**AFFIRMED.**

Huitink, J. concurs; Sackett, C.J., concurs in part and dissents in part.

**SACKETT, C.J.** (concur in part and dissents in part)

I concur in part and dissent in part. I find the record insufficient to review Damerville's claim of ineffective assistance of counsel. The defendant is contending that his attorney was ineffective in allowing him to plead guilty before receiving the ruling on his motion to dismiss. This bore on the knowing and voluntary nature of the plea. See *Manning v. State*, 654 N.W.2d 555, 561 (Iowa 2002) (finding Manning's claim that trial counsel pressured and encouraged him to plead guilty without ascertaining whether a plea bargain could be reached raised a genuine issue of material fact and precluded summary disposition). I would affirm and preserve the ineffective assistance claim for possible postconviction proceedings.