

IN THE COURT OF APPEALS OF IOWA

No. 8-621 / 08-0093
Filed August 13, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RENEE L. KRAMER,
Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Colleen D. Weiland, Judge.

Renee Kramer appeals from the judgment and conviction entered following her plea of guilty to second-degree burglary. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and E. Frank Rivera, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Paul L. Martin, County Attorney, and William Hoekstra, Assistant County Attorney, for appellee.

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

EISENHAUER, J.

Renee Kramer appeals from the judgment and conviction entered following her plea of guilty to second-degree burglary. She contends her counsel was ineffective in failing to file a motion in arrest of judgment because the court did not conduct an in-court colloquy before accepting her guilty plea to the felony charge. We review her claim de novo. *State v. Ray*, 516 N.W.2d 863, 865 (Iowa 1994).

Kramer bears the burden of demonstrating ineffective assistance of counsel. *State v. Morgan*, 559 N.W.2d 603, 612 (Iowa 1997). To prevail, she must prove by a preponderance of the evidence that her counsel failed in an essential duty and prejudice resulted. *State v. Westeen*, 591 N.W.2d 203, 207 (Iowa 1999).

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). Here, Kramer entered into a written guilty plea. The court referred to the plea when informing Kramer of her rights, but did not personally inform Kramer of all of the rights she was waiving. As the knowing and voluntary nature of the plea was not established, counsel breached an essential duty in failing to inform Kramer of her right to file a motion in arrest of judgment.

When a defendant claims ineffective assistance of counsel in connection with a guilty plea, he or she may establish the occurrence of prejudice by showing a reasonable probability that, but for counsel's errors, he or she would

not have pled guilty and would have insisted on going to trial. *Irving v. State*, 533 N.W.2d 538, 541 (Iowa 1995). Kramer at this stage offers no evidence to show a reasonable probability that but for counsel's error, she would not have pleaded guilty and would have insisted on going to trial. Because the record is not fully developed with respect to this issue, we preserve it for possible postconviction relief proceedings. See *State v. Straw*, 709 N.W.2d 128, 138 (Iowa 2006) ("In only rare cases will the defendant be able to muster enough evidence to prove prejudice without a postconviction relief hearing.").

AFFIRMED.