

**IN THE COURT OF APPEALS OF IOWA**

No. 9-768 / 09-0465  
Filed October 21, 2009

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

**vs.**

**ARNOLD KEITH TIEGEN,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Story County, Steven P. VanMarel,  
District Associate Judge.

Arnold Keith Tiegen appeals his convictions, following guilty pleas, for  
interference with official acts causing bodily injury and third-offense public  
intoxication. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant  
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney  
General, Stephen Holmes, County Attorney, and Stephen Owen, Assistant  
County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield, J., and Miller, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**MILLER, S.J.**

Arnold Keith Tiegen, at all relevant times represented by counsel, entered written pleas of guilty to interference with official acts causing bodily injury, in violation of Iowa Code section 719.1(1) (2007), and third-offense public intoxication, in violation of sections 123.46(2) and 123.91(2), both aggravated misdemeanors. The guilty pleas were entered pursuant to a plea agreement under which the State would recommend specified sentences and dismissal of other related charges. At the time he entered the pleas of guilty, Tiegen was fifty-one years of age and had a lengthy criminal history. He had earlier been sentenced to both concurrent and consecutive terms of incarceration. The district court reviewed the guilty pleas and entered orders accepting them, finding they were voluntarily and intelligently made, with an understanding and waiver of rights.

As relevant to the issue presented on appeal, at the subsequent sentencing hearing the State recommended, in relevant part, a ninety-day jail sentence on each of the two convictions, with the two sentences to run consecutively. Tiegen requested, in relevant part, jail terms of forty-five days on each conviction, with the two sentences to run consecutively. The district court sentenced Tiegen, in relevant part, to a two-year indeterminate term of incarceration on each conviction, with the terms to be served consecutively.

Tiegen appeals. He claims his guilty pleas were not knowing and voluntary, asserting the record does not show he was informed of the possibility of consecutive sentences.<sup>1</sup>

A plea of guilty waives a variety of constitutional rights. *State v. Meron*, 675 N.W.2d 537, 542 (Iowa 2004). Tiegen's claim that his guilty pleas were not knowing and voluntary implicates the Due Process Clause of the Fourteenth Amendment to the United State Constitution, and our review is thus de novo. *State v. Loye*, 670 N.W.2d 141, 150 (Iowa 2003). The State has the burden to show that a defendant's pleas of guilty are made voluntarily and intelligently. See, e.g., *State v. Reaves*, 254 N.W.2d 488, 493 (Iowa 1977) (holding it is the State's burden to show an accused's awareness of the rights being waived by a plea of guilty). The State must make the required showing by a preponderance of the evidence. See, e.g., *State v. Bowers*, 656 N.W.2d 349, 353 (Iowa 2002) (holding that the State has the burden to prove by a preponderance of the evidence that a defendant voluntarily waived constitutional rights).

Due Process requires that a guilty plea be entered voluntarily and intelligently. *State v. Philo*, 697 N.W.2d 481, 488 (Iowa 2005). The accused

---

<sup>1</sup> Tiegen did not file a motion in arrest of judgment. This would ordinarily preclude his right to challenge the adequacy of his guilty pleas by way of appeal. Iowa R. Crim. P. 2.24(3)(a). Tiegen's written pleas of guilty acknowledged he was required to file a timely motion in arrest of judgment in order to contest the adequacy of his guilty pleas. However, neither of those written guilty pleas nor any colloquy with the court informed him, as required by Iowa Rule of Criminal Procedure 2.8(2)(d), that a failure to do so would preclude his right to assert on appeal any challenges to his pleas of guilty based on alleged defects in the plea proceedings. The State agrees that Tiegen was not adequately informed of the consequences of not filing a motion in arrest of judgment. We conclude that Tiegen's claim is thus properly before us. See *State v. Oldham*, 515 N.W.2d 44, 46 (Iowa 1994) (holding that failure to fully comply with the requirements of rule 2.8(2)(d) reinstates a defendant's right to appeal the legality of a guilty plea).

must be fully aware of the direct consequences of a guilty plea. *State v. White*, 587 N.W.2d 240, 242 (Iowa 1998). The purpose of Iowa Rule of Criminal Procedure 2.8(2)(b) is to “ensure that guilty pleas are made voluntarily, intelligently, and with a factual basis.” *State v. Kirchoff*, 452 N.W.2d 801, 804 (Iowa 1990). Tiegen claims the district court did not inform him of the maximum possible punishment upon convictions for the offenses to which he was pleading guilty, as required by rule 2.8(2)(b)(2). More specifically, he claims the court failed to inform him that by pleading guilty to both charges he was subject to the possibility of being sentenced to consecutive terms of incarceration. Sentences to be served consecutively are a direct consequence of guilty pleas, and in order to make an intelligent decision regarding the advantages and disadvantages of tendering guilty pleas a defendant facing several charges must be aware of the possibility that the court may order multiple sentences to run consecutively. *White*, 587 N.W.2d at 243-46.

Our supreme court has indicated that whether a defendant understood the maximum possible penalty may be determined from examining the whole record. See *id.* at 243 (“Nor does the result here depend on whether it is the judge’s responsibility to advise the defendant that ‘maximum possible punishment’ means consecutive sentences are possible or whether defendant’s knowledge and understanding can be gleaned from other indicia in the record.”); see also *State v. Hook*, 623 N.W.2d 865, 871 (Iowa 2001) (Carter, J., dissenting) (“In *State v. Kirchoff*, 452 N.W.2d 801, 805 (Iowa 1990), we recognized that, if information concerning the rights listed in rule [2.8(2)(b)] are conveyed to the

defendant in the form of a written guilty plea, and it does not appear that defendant misunderstood the resulting loss of those rights, there is no entitlement to withdraw the plea.”<sup>2</sup> In *White*, the court did not inform the defendant of the possibility of consecutive sentences. *White*, 587 N.W.2d at 243. Additionally, “the record [was] silent as to any advice to defendant by his attorney or from any other source that consecutive sentences were possible if he pled guilty.” *Id.* Tiegen’s case differs substantially.

Here the written pleas of guilty signed by Tiegen each acknowledged not only that “the maximum sentence is imprisonment for not more than two years” and that “the court may sentence me up to the maximum provided by the law,” but also that as to each charge the State would recommend “90 days in the Story County Jail . . . to run consecutive.” (Emphasis added.) We conclude the written pleas of guilty show Tiegen was aware that any terms of incarceration might be imposed to run consecutively, and that his claim his pleas were not knowing and voluntary is thus without merit.<sup>3</sup>

**AFFIRMED.**

---

<sup>2</sup> *Kirchoff* involved aggravated misdemeanors, as does this case. *Kirchoff* stands for the proposition that the requirements of rule 2.8(2)(b) can be satisfied in written form in cases involving aggravated and serious misdemeanors. See *State v. Yarborough*, 536 N.W.2d 493, 494-96 (Iowa Ct. App. 1995).

<sup>3</sup> Although not necessary to our decision, we note four additional facts that support our conclusion that at the time of his guilty pleas Tiegen was well aware of the potential for consecutive sentences. First, as previously noted, Tiegen had earlier incurred both concurrent and consecutive sentences. Second, Tiegen was represented by counsel in this case. Third, although the sentencing hearing occurred two days after the written guilty pleas were filed, in compliance with the plea agreement as noted in the written guilty pleas and consistent with the plea agreement the State recommended consecutive sentences. Fourth, at the sentencing hearing Tiegen himself, through counsel, argued for consecutive (but shorter) sentences.