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CLERK SUPREME COURT
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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)	
Plaintiff-Appellee,)	Filed June 30, 1981
vs.)	
HOWARD C. FIELDS,)	<u>1-104</u>
Defendant-Appellant.)	64560

Appeal from Linn District Court - M. C. Herrick, Judge.

Defendant challenges his guilty plea convictions for false use of a financial instrument and escape, contending that the trial court failed to comply with the requirements of Iowa R. Crim. P. 8(2) before accepting his guilty pleas on both charges. AFFIRMED.

Stephen Meyer of Meyer Law Firm, Chariton, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Lona Hanson, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnons, JJ.

DONIELSON, J.

In these consolidated appeals, defendant Howard Fields challenges his guilty plea convictions for false use of a financial instrument in violation of section 715.6, The Code, and for escape in violation of section 719.4, The Code. On appeal, defendant asserts that the trial court failed to comply with the requirements of Iowa R. Crim. P. 8(2) before accepting his guilty pleas. We affirm the convictions.

Our review is limited to correction of errors at law. Iowa R. App. P. 4.

I.

On July 9, 1979, defendant was charged by information with three counts of false use of a financial instrument. He initially pleaded not guilty to these charges. On September 30, 1979, defendant escaped from the Lucas County jail but was subsequently recaptured. On October 22, 1979, he was charged by information with escaping from custody. The same day he pleaded guilty to that charge and to the false use charges as well.

Before accepting defendant's guilty pleas on either of the charges, the trial court engaged in a discussion with the defendant during which it satisfied itself that the pleas were voluntarily and intelligently entered. However, the court did not advise the defendant that failure to raise alleged defects in the plea proceedings by a motion in arrest of judgment precluded the right to assert them on appeal.

When the defendant appeared for sentencing on both charges on November 27, 1979, the court gave him the opportunity to withdraw his guilty pleas because the presentence report indicated that he may have been coerced into pleading guilty. However, the defendant declined to withdraw the pleas and explained that the coercion was from his ex-wife and not from any other source.

Primarily because of defendant's criminal record, the court sentenced him to three concurrent sentences of ten years on the false use convictions and to a sentence of five years on the escape conviction, with the escape sentence to run consecutive to the false use sentences. Defendant then filed timely notice of appeal from each conviction; at no time did he file a motion in arrest of judgment.

II.

Defendant contends on appeal that the trial court did not comply with the requirements of Iowa R. Crim. P. 8(2) because it failed 1) to establish a sufficient factual basis for either guilty plea; 2) to explain the nature of either charge and

ascertain the extent of defendant's understanding thereof; and 3) to inform the defendant that further trial proceedings would be waived as a consequence of his having pleaded guilty. Having carefully reviewed the record, we conclude that both pleas were properly accepted by the trial court.

Essentially, Iowa law as to what standard must be satisfied before a court can accept a guilty plea to a felony charge was set forth in State v. Sisco, 169 N.W.2d 542 (Iowa 1969) and further elaborated upon in Brainard v. State, 222 N.W.2d 711 (Iowa 1974). Those cases held that before accepting the plea, the trial court must first determine 1) that defendant understands the charge against him, 2) that defendant is aware of the penal consequences of his plea, 3) that the plea is entered voluntarily, and 4) that there is a factual basis for the plea. Sisco, 169 N.W.2d at 548; Brainard, 222 N.W.2d at 713. See also State v. Worley, 297 N.W.2d 368 (Iowa 1980); State v. Fluhr, 287 N.W.2d 857 (Iowa 1980). The Sisco-Brainard standards are now codified in Iowa R. Crim. P. 8(2); only substantial compliance with the rule is required. Worley, 297 N.W.2d at 371; Fluhr, 287 N.W.2d at 864.

We first address the defendant's contention that the trial court failed to sufficiently inquire into the extent of defendant's understanding of the nature and elements of the false use and escape charges. The requirement that the trial court determine defendant's understanding of the charge was discussed at length in Brainard, where the supreme court held that this determination involves two inquiries. Id. at 714. First, the judge must explain the charge, the extent of the explanation depending on the entire record, including the complexity of the charge, the defendant's education and experience, and other circumstances of the particular case. Id. The judge must then inquire into defendant's understanding of the charge. Id. The record must show that the judge personally made sufficient inquiry of the defendant to elicit responses that demonstrate defendant's understanding of the nature of the charge. Id. at 715. This can best be achieved by an inquiry in which the judge relates the elements of the charge to the basic acts required to constitute the offense, since the purpose of the inquiry requirement is to determine whether the defendant understands the law as it relates to the facts. Id. at 714.¹ However, it is not the case that every small omission from the

¹In State v. Reeves, 254 N.W.2d 488 (1977), the supreme court rejected the notion that a colloquy between the judge and the accused is the only acceptable method to determine the defendant's understanding of the charge against him and held that the accused's understanding may also be shown by defense counsel's assurances made to the

colloquy between judge and defendant should result in invalidation of the guilty plea; again, we emphasize that only substantial compliance with the Sisco-Brainard guidelines is required. Worley, 297 N.W.2d at 371; Fluhr, 287 N.W.2d at 864. We find such compliance in the instant case. Defendant was charged with three counts of false use of a financial statement in violation of section 715.6, The Code. Without setting forth the elements of a false use charge, we conclude that the following remarks by the court taken from two different points in the transcript were sufficient to advise defendant of those elements:

THE COURT: Now you are charged with the offense in Count I of false use of a financial instrument on or about May 30th, 1979, at the Gamble's Store in the City of Chariton. The Information states that you did present a check, a copy of which is attached to the Information, to fraudulently obtain a Frigidaire washer and dryer, value of \$763.10, knowing that the instrument was not what it purported to be.

You realize you would be admitting the truth of this if you plead guilty.

....

THE COURT: Now then in regard to Count II there is a charge again of false use of a financial instrument at the Radio Shack at the city square in Chariton. This is a check in the amount of \$267 which you used the name Robert J. Richman again. Did you write out that check and give it to them?

....

THE COURT: Now, then, in regard to the offense described in Count III, this is false use of a financial instrument which was presented to the Hy-Vee Store in the amount of \$64.52, this check purports to be signed by Robert J. Richman. Did you sign the check?

Defendant was also charged with escape in violation of section 719.4, The Code. The trial court made this statement to the defendant concerning the escape charge:

This charge is that you did on or about September 30th escape from the county jail or the Lucas County Law Enforcement Center here in Chariton. What did you have to do with this matter?

court or by anything in the record that establishes such understanding. Reaves, 254 N.W.2d at 493. The Reaves decision was based on a desire to shift the focus from "courtroom litany" to the accused's understanding of the charges against him. Reaves, 254 N.W.2d at 491. This shift in focus met with express disapproval in State v. Fluhr, 287 N.W.2d 857 (Iowa 1980), where it was held, over a strong dissent, that Iowa R. Crim. P. 8(2)(b) prevails over the Reaves decision and reinstates the Sisco-Brainard standard and most notably the Brainard requirement of an in-court exchange between judge and defendant as the appropriate means to demonstrate defendant's understanding of the charges. Fluhr, 287 N.W.2d at 866.

Without detailing the elements of that charge, we find that these remarks, together with the court's questions establishing the facts that the defendant had sawed his way out of jail and had left without permission of the Sheriff, were sufficient to apprise the defendant of the elements of the escape charge.

Defendant also contends that the trial court violated Iowa R. Crim. P. 8(2) by failing to establish a sufficient factual basis for either guilty plea. However, as has already been discussed, the trial court ascertained that the defendant performed the actions that constitute a violation of both the fraudulent use statute and the escape statute. Although the court did not specifically ask the defendant if he used the checks with the intent to fraudulently obtain something of value, we think that the fact of defendant's intent was sufficiently established during the pre-plea exchange between the court and the defendant. Additionally, the trial court may rely on the minutes of testimony as well as on its colloquy with the defendant to establish a factual basis for the charge. Fluhr, 287 N.W.2d at 868. The minutes of testimony attached to the information on the escape charge reveal facts about defendant's disappearance from the county jail that support a factual basis for that charge. We therefore reject defendant's contention on this point.

Finally, defendant contends that the trial court violated Iowa R. Crim. P. 8(2) by not informing the defendant that waiver of trial on the charges would be the consequence of a guilty plea. We find this argument to be without merit on the basis of this exchange between defendant and the court:

THE COURT: Do you understand that if you plead not guilty you would be entitled to a speedy and public trial by a jury?

DEFENDANT: Yes, your Honor.

THE COURT: Now this is in regard to each of these three charges.

DEFENDANT: Yes, your Honor.

We believe that these remarks by the trial court sufficiently convey the point that trial would be waived by a plea.

III.

Defendant also asserts that his guilty pleas must be vacated because the trial court did not tell him, as it was required to do by Iowa R. Crim. P. 8(2)(d), that any challenges to the pleas based on alleged defects in the plea proceedings must be raised in a motion in arrest of judgment and that failure to so raise such challenges precludes

the right to assert them on appeal. We are not persuaded by this argument. Since the court's failure to discuss the motion in arrest of judgment requirement does not affect the validity of the guilty pleas, vacating the pleas as defendant requests is an inappropriate remedy; we hold instead that the appropriate relief for the court's omission is to waive the requirement that the defendant file a motion in arrest of judgment prior to challenging the plea proceedings on appeal.

We remand for resentencing under § 719.4 and § 901.8. The trial court indicated to the defendant that a consecutive sentence was mandatory. However, State v. Smith, 300 N.W.2d 90 (Iowa 1981) and State v. Jones, 299 N.W.2d 679 (Iowa 1980) held that where the defendant entered a plea of guilty but had not yet been sentenced when the escape took place the § 901.8 mandatory consecutive provision was not yet applicable. We note this error on our own motion because it invalidates the escape sentence.

We vacate the escape sentence and remand for resentencing. The court has discretionary authority, of course, to order the new sentence for escape to be consecutive with the theft sentence. We do not intimate any view concerning how that discretion should be exercised.

AFFIRMED; SENTENCE VACATED AND REMANDED FOR RESENTENCING.