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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MICHAEL RAY McVAY,
Petitioner-Appellant,
vs.
STATE OF IOWA,
Respondent-Appellee.

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Filed November 29, 1982

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Appeal from Polk District Court, C. E. Moore, Senior Judge.

Petitioner appeals from denial of his application for postconviction relief from his conviction of first-degree robbery pursuant to a guilty plea. **AFFIRMED.**

Ione G. Shadduck, Des Moines, for petitioner-appellant.

Thomas J. Miller, Attorney General, and Joseph P. Weeg, Assistant Attorney General, for respondent-appellee.

Considered en banc.

Petitioner Michael Ray McVay pleaded guilty on August 20, 1980, to first-degree robbery. The guilty plea court permitted petitioner to waive his entitlement to a presentence investigation report and to a fifteen-day delay period, after informing him that waiver of the delay would bar him from later asserting any challenge to the guilty plea proceedings. Prior to sentencing, the court inquired of petitioner whether he understood the assistant county attorney's comment that a plea of guilty in this case, where there was an allegation of firearm had been used, would trigger mandatory minimum sentence provisions. Petitioner responded that he did. Petitioner now challenges several aspects of the guilty plea proceedings.

Our scope of review in this case is on assigned error with the exception of those issues alleging constitutional violations, which we review *de novo*, making an independent evaluation of the totality of the circumstances. State v. Cullison, 227 N.W. 121, 126-27 (Iowa 1975).

I. Presentence Investigation. Initially we address petitioner's contention that the trial court abused its discretion and caused his constitutional rights to be violated by permitting a waiver of the presentence investigation. We agree that Iowa Code § 901.2, which provides "Upon a plea of guilty. . . [t]he court shall order a presentence investigation when the offense is a class "B," class "C," or class "D," felony," mandates a presentence investigation in most cases. However, in this case the court had no discretion to impose any sentence other than the one which was finally imposed, a mandatory maximum sentence of twenty-five years and a mandatory minimum sentence of five years. We conclude that the failure to order a sentencing court's presentence investigation, where the petitioner expressly

waived the report and the court had no discretion in determining the ultimate sentence, was harmless error. Cf. State v. Matlock, 304 N.W.2d 226, 228 (Iowa 1981)(where sentence imposed was minimum possible, trial court did not abuse its discretion in failing to state on the record its reasons for the sentence).

II. Acceptance of the Guilty Plea. We are unpersuaded by the State's argument that petitioner is barred from raising any issues regarding the inadequacy of the guilty plea proceedings, and therefore proceed to address the merits of petitioner's contention. See Redding v. State, 274 N.W.2d 315, 317 (Iowa 1979)("[f]ailure to appeal bars relief in a postconviction action on the ground of abuse of process only as to factual and legal contentions which the postconviction applicant knew of at the time of the original trial court proceeding and which he deliberately and inexcusably failed to pursue on appeal").

Petitioner contends that the acceptance of his guilty plea violated constitutional safeguards because the plea was given without full understanding of the elements of the crime and the consequences of admission. We disagree. The following colloquy between the trial court and petitioner clearly demonstrates that a factual basis existed for the guilty plea, as required by State v. Sisco, 169 N.W.2d 542 (Iowa 1969), and Brainard v. State, 222 N.W.2d 711 (Iowa 1974):

Q. [Trial court]. Did you commit this offense with which you're charged? A. [petitioner] Yes.

Q. Tell me in your own words what you did. A. Well, we entered the house and had taken some silver and jewelry out of the lady's house.

Q. Where was the house? A. It was on a hill. I don't know the address.

Q. That's in Polk County, Iowa? A. Yes.

Q. About when was this? A. What?

Q. About when did this happen? A. About two o'clock in the morning.

Q. On the — A. 27th.

Q. —27th of June, is that about right? A. Yes.

Q. Were you armed with a gun at that time? A. Yes.

Q. What kind of a gun were you armed with? A. 257 Magnum.

Q. It was loaded? A. Yes.

177

We also think that, contrary to petitioner's assertion, he understood the nature of the charge and the fact that intent is an element of the offense. Prior to the preceding line of questioning, the court read to petitioner the definitions of robbery and first-degree robbery, which included the intent element. Petitioner then unequivocally responded "yes" when asked whether he committed the offense, thus indicating that he understood the nature of the offense and its elements. We conclude that the existence of and defendant's understanding of the intent element can be inferred from "the whole record," Brainard v. State, 222 N.W.2d 711, 714-15 (Iowa 1974), i.e., defendant's admission that he entered the residence and took silver and jewelry at approximately two o'clock in the morning; defendant's prior felony record; and defendant's response that he committed the offense as read to him.

Lastly, we disagree with petitioner's assertion that he was not aware of the possible penal consequences of a guilty plea. This discussion demonstrates that the opposite was true:

Q. [Assistant County Attorney]: Your Honor, also I think the Defendant should be informed that based upon his plea of guilty to this charge, where there is an allegation that a firearm has been used, that he will also have to serve a mandatory minimum of five years.

Q. [Trial court]. You understand that?
A. [Petitioner] Yes.

Q. That's the law on a forcible felony.

Have any threats or promises been made to you to induce you to plead guilty? A. No.

Q. Have there been any predictions made to you or do you have any understanding that the Court might possibly do anything other than impose the maximum penalty which I have described to you? A. Say that again.

Q. I have explained to you that the penalty for this is 25 years.

I want to know whether anybody has predicted that the Court's going to do anything less than that. A. No.

Q. You don't have any such understanding, do you?
A. No.

Q. That the Court's going to do anything other than give you the maximum penalty in this case? A. Can what?

Q. Do you have any ideas in your mind that the Court might do anything other than sentence you to 25 years, which is the maximum penalty in this case? A. No.

III. Plea Bargaining Procedures. An examination of the record reveals that the trial court did inquire into the existence of prior plea discussions and disclose the agreement on the record, as required by Iowa Rules of Criminal Procedure 8(2)(c) and 9(2). We therefore conclude that the court properly followed the applicable statutory plea bargaining procedures.

We find each of petitioner's contentions on appeal to be without merit and therefore affirm the denial of his application for postconviction relief.

AFFIRMED.