

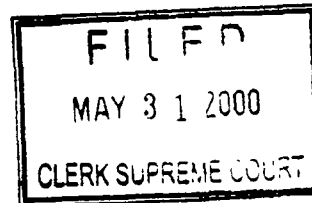
IN THE COURT OF APPEALS OF IOWA

No. 0-244 / 99-0958
Filed May 31, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

WILLIE F. FORD,
Defendant-Appellant.



Appeal from the Iowa District Court for Black Hawk County, George L. Stigler (trial), Jon Fister (sentencing), Judges.

Defendant appeals from the judgment and sentence entered upon a jury verdict finding him guilty of second-degree burglary in violation of Iowa Code section 713.5 (1997) and the court finding him an habitual offender in violation of sections 902.8 and 902.9(2). He contends the trial court erred in (1) rejecting his guilty plea, and (2) allowing him to waive preparation of a presentence investigation report. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Robert P. Ranschau, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Denise A. Timmins, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Douglas Eichholz, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Vaitheswaran, JJ.

SACKETT. C.J.

Defendant-Appellant, Willie Fitzgerald Ford, appeals from the judgment and sentence following his conviction for burglary in the second degree-habitual violator, in violation of Iowa Code sections 713.1 and 713.5 (1997). Defendant contends the district court abused its discretion and erred by rejecting his guilty plea prior to trial and for allowing him to waive the use of a presentence investigation report at sentencing. We affirm.

Defendant was charged by trial information with burglary in the second degree in violation of Iowa Code sections 713.1 and 713.5 (1997). The case went to a jury trial on March 23, 1999. Following jury selection, but before the trial began, the defendant decided to accept the State's offer to plead to burglary in the third degree. The court began the plea colloquy but stopped when the defendant hesitated in answering whether he was satisfied with his attorney's legal representation. The court rejected the defendant's attempt to plea guilty and the trial was commenced.

On March 24, 2000, the defendant was found guilty of burglary in the second degree. Following the verdict, the State filed an amended trial information charging the defendant as a habitual violator in violation of Iowa Code sections 902.8 and 902.9 (1997). Defendant stipulated to his status as a habitual offender and waived the use of a presentence investigation report. He was subsequently sentenced to an indeterminate term of fifteen years with a mandatory minimum of three years.

The standard of review for refusal to accept a guilty plea is for abuse of discretion. *Farley v. Glanton*, 280 N.W.2d 411, 415 (Iowa 1979). This discretion

is extremely broad. *Id.* Defendant contends the trial court abused its discretion when it rejected his guilty plea. The State contends defendant failed to preserve error regarding this issue.

Matters not raised in the trial court, including constitutional questions, cannot be raised for the first time on appeal. *In re C.D.*, 508 N.W.2d 97, 100 (Iowa App. 1993). Defendant did not object to the district court's rejection of his guilty plea nor did he file an application for writ of certiorari challenging the rejection. *See Farley*, 280 N.W.2d at 412-13. Defendant failed to properly preserve error.

In addition, defendant contends the district court erred for allowing him to waive the use of a presentence investigation report. Our standard of review is for the correction of errors at law. Iowa R. App. P. 4; *State v. Thompson*, 494 N.W.2d 239, 240 (Iowa 1992). In *Thompson*, the Iowa Supreme Court held that as long as a defendant had knowingly and voluntarily waived the use of the presentence investigation report in the sentencing process, he could not later complain of its waiver. *Campbell v. State*, 576 N.W.2d 362 (Iowa 1998); *Thompson*, 494 N.W.2d at 241. Defendant knowingly and voluntarily waived the presentence investigation report in this matter.

Defendant relies on *State v. Bolden*, 538 N.W.2d 879 (Iowa App. 1995) in support of his argument that waiver of the use of a presentence investigation report is appropriate only in situations involving forcible felonies or the imposition of a mandatory minimum sentence. Defendant asserts that since the district court had discretion in selecting an appropriate sentence in this matter, the

defendant could not validly waive the court's use of a presentence investigation report.

The defendant's reliance on *Bolden* is misplaced. The Iowa Supreme Court has held,

"Nothing in chapter 901 or this court's prior decisions support his contention that the waiver of the use of a PSI report is prohibited merely because the sentencing court has some discretion with respect to the sentence to be imposed. To the extent *Bolden* suggest otherwise, it is overruled."

Campbell, 576 N.W.2d at 364. The sentencing court did not abuse its discretion in permitting the defendant to waive the use of the presentence investigation report.

AFFIRMED.

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