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IN THE COURT OF APPEALS OF IOWA

NICHOLAS S. L. HENDERSON,

Petitioner-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

Filed October 18, 1979

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2-61989

Appeal from Polk District Court - M. J. V. Hayden, Judge.

Postconviction relief petitioner appeals from judgment denying his application alleging that guilty plea was not made knowingly, voluntarily, and intelligently, and that sentence was based on erroneous and misleading information in presentence investigation report. - Affirmed.

Tim Pearson, of Hyland, Laden & Pearson, P.C., for petitioner-appellant.

Thomas J. Miller, Attorney General of Iowa, and Lona Hansen, Assistant Attorney General, for respondent-appellee.

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

PER CURIAM

Petitioner appeals from a judgment denying his application for postconviction relief. We affirm.

I. Petitioner's first ground for reversal is that his guilty plea entered at his original trial was not entered knowingly, voluntarily, and intelligently. Before a guilty plea may be accepted, the trial court must determine that the accused understands the charge; that he or she is aware of the penal consequences of the plea, including the maximum and minimum sentences, and the constitutional rights that are waived by a guilty plea; that the plea is entered voluntarily; and that a factual basis exists for the plea. State v. Reaves, 254 N.W.2d 488, 491 (Iowa 1977); Brainard v. State, 222 N.W.2d 711, 713 (Iowa 1974); State v. Sisco, 169 N.W.2d 542, 547-48 (Iowa 1969).

Petitioner contends his guilty plea was not entered voluntarily since he believed the trial court would follow the sentencing recommendations of the county attorney pursuant to a plea bargaining agreement between the county attorney and petitioner's counsel. The record clearly shows, however, that the trial court expressly warned petitioner that it would not be bound by any sentencing recommendations by the county attorney, and had no reason to believe that petitioner did not understand that warning. We conclude that petitioner's contention that his guilty plea was not voluntary by reason of his belief that the trial court would follow the sentencing recommendations of the county attorney is without merit. See State v. Gaffey, 250 N.W.2d 424, 424-25 (Iowa 1977); State v. Townsend, 238 N.W.2d 351, 356-57 (Iowa 1976).

Petitioner also contends that because of his low level of education, he did not understand the proceedings held pursuant to his guilty plea. The record shows that the trial court conducted a colloquy with petitioner in full compliance with the requirements of Brainard, 222 N.W.2d at 722-23, and Sisco, 169 N.W.2d at 547-48. There is no evidence in the record that petitioner did not adequately understand the guilty plea proceedings. Petitioner has not shown that his guilty plea was not entered knowingly, and intelligently.

II. The trial court sentenced petitioner to the men's reformatory for a term not to exceed ten years, the statutory maximum on a charge of uttering a forged instrument. Petitioner contends that the trial court based its sentence on erroneous and misleading

information contained in the presentence investigation report. Generally, a sentence that does not exceed the statutory maximum will only be interfered with on a showing of an abuse of discretion. State v. Noonan, 246 N.W.2d 236, 237 (Iowa 1976); State v. Dittmar, 239 N.W.2d 545, 546 (Iowa 1976). However, petitioner contends that by basing its sentence on erroneous information contained in the presentence investigation report, the trial court based its sentence on an impermissible determining factor, which has been held to be a sufficient ground to vacate the sentence. State v. Remmers, 259 N.W.2d 779, 784-85 (Iowa 1977) (length of sentence based in part on when defendant would be eligible for parole); State v. Nichols, 247 N.W.2d 249, 255-56 (Iowa 1976) (sentence based on defendant's failure to plead guilty); State v. Jackson, 204 N.W.2d 915, 917 (Iowa 1973) (sentence based on mistaken belief that minimum sentence order of judicial district was binding); State v. Milliken, 204 N.W.2d 594, 598 (Iowa 1973) (sentence based on defendant's indigency and failure to pay fine). The information petitioner contends was erroneous, and on which the trial court based its sentence, consisted of statements in the presentence investigation report indicating that petitioner was wanted for various infractions of the law in several other states and may be wanted in several additional states.

The factors that should be weighed in determining a proper sentence include: the nature of the offense, the attending circumstances, defendant's age, character, and propensities and chances of reform. State v. Townsend, 238 N.W.2d 351, 358 (Iowa 1976); State v. Warner, 229 N.W.2d 776, 783 (Iowa 1975); State v. Cupples, 260 Iowa 1192, 1197, 152 N.W.2d 277, 280 (1967). Here, unlike those cases that petitioner cites in which it was determined that the trial court considered an impermissible determining factor, the information considered by the trial court was related to petitioner's character, and propensities and chances of reform. There was no evidence, other than petitioner's denials at his postconviction relief hearing, that the information contained in the presentence investigation report was inaccurate. It is well-settled that the punishment should fit both the crime and the individual. Remmers, 259 N.W.2d at 782-83; Warner, 229 N.W.2d at 783; Cupples, 260 Iowa at 1197, 152 N.W.2d at 280. We think the information contained in the presentence investigation report related to petitioner's

character, and propensities and chances of reform, and thus aided the trial court in determining a punishment to fit the individual as well as the crime. In the absence of any proof of the inaccuracy of the information other than petitioner's denials, we conclude that the trial court did not base its sentence on an impermissible determining factor and did not commit reversible error.

AFFIRMED.