FILED
JUN 24 1977
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed June 24, 1977
v.	)	
LESLIE GENE KLOUDA,	)	197 / 59630
Appellant.	)	

Appeal from Dallas District Court - Van Wifvat, Judge.

Defendant appeals trial court's overruling of his motion to withdraw his plea of guilty to a charge of assault with intent to commit murder. Affirmed.

Jerald W. Kinnamon and Jon M. Kinnamon, of Cedar Rapids, for appellant.

Richard C. Turner, Attorney General, Shirley G. Steele, Assistant Attorney General, Alan Shirley, Dallas County Attorney, for appellee.

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

ALLBEE, C.J.

Defendant, Leslie Gene Klouda, appeals trial court's acceptance of his guilty plea to a charge of assault with intent to commit murder as defined in section 690.6, The Code, and the accompanying sentence of 30 years in the Men's Reformatory. Klouda challenges trial court's overruling of his motion to withdraw his plea of guilty, made before sentencing, alleging: (1) he did not understand the penal consequences of his plea; and (2) trial court failed to comply with the standards of State v. Parrish, 232 N.W.2d 511 (Iowa 1975) to determine whether he reaffirmed his guilty plea despite the knowledge trial court is not bound by the terms of any plea bargain.

I. Understanding of the penal consequences.

Klouda asserts he did not understand the penal consequences of his plea rendering it involuntary. *See* Brainard v. State, 222 N.W.2d 711 (Iowa 1974). During the plea tender the following colloquy occurred between the court and Klouda:

THE COURT: Do you know what the penalty is for this offense?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And what do you understand that to be?

THE DEFENDANT: Thirty years.

THE COURT: That is the penalty, of being imprisoned in the Men's Reformatory at Anamosa or the Penitentiary at Fort Madison for a period not to exceed thirty years?

THE DEFENDANT: Yes, Your Honor.

THE COURT: That is covered under the Code section of 690.6. Have you discussed that with your attorney?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You understand that to be the penalty that the Court would impose or could impose in this case?

THE DEFENDANT: Yes, I do, Your Honor.

THE COURT: And you are willing to accept this?

THE DEFENDANT: Yes, Your Honor.

Despite his clear statements, Klouda now maintains that he believed that trial court had discretion to sentence him from 30 days to 30 years because of misinformation from his attorney. Klouda testified that he did not understand Iowa's indeterminate sentencing law whereby if an accused is sentenced to the penitentiary, trial court has no discretion as to its length. Klouda's testimony was contradicted by his attorney who maintained that he had informed Klouda of the sentence for this charge. The attorney testified that after speaking to the executive secretary of the parole board he informed Klouda that they could parole him in 30 days, but he would probably serve 5 years.

At its basis, Klouda's claim is that despite his attorney's testimony and his statements during the plea tender, it is uncontroverted that he did not subjectively understand the penal consequences, rendering his plea involuntary. Of course, defendant is the only person who knew what was in his mind during the plea tender. Yet we do not believe defendant's assertions concerning his subjective knowledge is sufficient to vitiate the other evidence and the plea itself. *See* People v. Belanger, 252 N.W.2d 472, 478-480 (Mich. App. 1977). We agree with the Michigan court that the administration of justice cannot support a purely subjective test of the voluntariness of a plea. People v. Belanger, supra. We have every indication here that defendant was informed from several sources of the penal consequence of his plea. *See* State v. Reppert, 215 N.W.2d 302, 307 (Iowa 1974). Indeed his statements during the plea tender demonstrate this knowledge. Defendant's reliance on the dicta contained in Wallace v. State, 245 N.W.2d 325, 327 (Iowa 1976) is misplaced. Trial court did not abuse its limited discretion in overruling Klouda's motion to withdraw his plea of guilty on this ground. *See* State v. Watts, 225 N.W.2d 143, 146 (Iowa 1975).

II. Failure to comply with Parrish standards.

Klouda asserts trial court erred in that having once determined the existence of plea bargain, it did not obtain his subsequent reaffirmance of his desire to plead guilty after informing him that the court was not bound by any plea bargain. *See* State v. Parrish, 232 N.W.2d 511 (Iowa 1975). However, defendant does not assert, nor does it appear, that trial court did not follow the plea bargain. In State v. Fischer, 223 N.W.2d 243 (Iowa 1974), our Supreme Court held an that unfulfilled plea bargain may present a false inducement to an accused sufficient to vitiate the voluntariness of the plea. In response to the *Fischer* dilemna, it outlined standards necessary to uphold the voluntariness of such a plea, despite the unfulfilled plea bargain, in *Parrish*. However, we believe a prerequisite to the application of *Parrish* standards is trial court's failure to abide by the terms of the plea bargain. A fulfilled plea bargain is not necessarily a false inducement. Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970). Indeed, the *Fischer* court cited with approval from State v. Wolske, 280 Minn. 465, 160 N.W.2d 146, 152 (1968):

> [I]n the event the agreement is not fulfilled by the prosecutor or not acceptable to the court, the defendant should be afforded the option of either withdrawing or reaffirming his plea, . . . *Fischer* at 246.

It follows *Parrish* standards have meaningful application only if the plea bargain is not followed.

Trial court did not abuse its limited discretion in overruling defendant's motion to withdraw his plea of guilty. Defendant's other assignments of error have been rendered harmless in light of the foregoing discussion. Trial court's judgment and sentence hereby are affirmed.