FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

307

MICHAEL ROBINSON,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Filed March 22, 1979

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2-62187

Appeal from Polk District Court - Luther T. Glanton, Jr., Judge.

Postconviction applicant convicted of robbery upon plea of guilty appeals from order denying postconviction relief. AFFIRMED.

John C. Wellman of Offender Advocate Office, Des Moines, for appellant.

Thomas J. Miller, Attorney General; Ann Fitzgibbons, Assistant Attorney General; and Dan Johnston, Polk County Attorney; for appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

This is an appeal from an order in a proceeding seeking postconviction relief under chapter 663A, The Code, 1977. Petitioner-appellant, Michael Robinson, has been convicted and sentenced upon a plea of guilty to the offense of robbery, a violation of section 711.3, The Code, 1975.

On his application for postconviction relief, petitioner contended in the trial court and asserts on this appeal that his plea of guilty was improperly accepted by the sentencing court based upon (a) the record made at that time, or (b) the subsequent showing made by petitioner at the evidentiary hearing on his postconviction application. He asserts that the record of either or both of these proceedings reveals that the plea was not voluntarily and intelligently made, and that a factual basis for the charge against petitioner was not present. We reject all of these contentions and affirm the trial court. Ordinarily, proceedings for postconviction relief are treated as actions at law triable to the court and review thereof is not de novo. But, when reviewing alleged constitutional issues, we will review de novo the evidence surrounding such claims. This enlarged scope of review has been applied in cases involving issues similar to those presented on this appeal. See Watts v. State, 257 N.W.2d 70, 71 (Iowa 1977).

I. It appears from the record that the sentencing court, prior to accepting petitioner's guilty plea, informed him of the elements of the charge, questioned him as to his understanding of the charge, and informed him of the maximum penalty for conviction. In addition, the sentencing court advised defendant of those constitutional rights he would be waiving by pleading guilty. Finally, the court asked defendant if he was pressured, coerced, or threatened into pleading guilty. Defendant responded that he was not.

Petitioner's attack on the plea proceedings surrounds the circumstances whereby the sentencing court attempted to establish a factual basis for the charge. This was done by asking the petitioner to describe what had happened. He initially stated that he had taken money from a cab driver because a companion with a knife made him participate. At this time, petitioner's attorney stopped the proceedings and talked to him off the record. Petitioner next told the court (on the record) that he did not plan to rob the cab driver although he and his companion had probably discussed it. At this point the court interjected, stating:

> THE COURT: Excuse me, Mr. Robinson. I'm not going to talk and whittle a plea of guilty out of you. I am going ask you now to tell me what you did and if what you did amounts to the crime of robbery, I am going to accept your plea of guilty. If what you did does not amount to the crime

> of robbery, I am going to require that you stand trial immediately. Would you tell me what you did from the time you locked him in the cab trunk?
>
> MR. ROBINSON: Do you want me to start all over?
>
> THE COURT: Yes, sir, tell me what you did and what you said.

Following this colloquy, petitioner, speaking on the record in open court, started anew and assured the court that he had not acted out of fear of his companion, that he had realized a robbery was taking place, and that he was a willing participant. He further stated that his earlier statement to the effect that his companion had forced him to participate was not correct and that he was now telling the truth to the court.

Petitioner asserts that the court's statements constituted badgering and forced him to admit to something that was not true in order to satisfy the court. We cannot reach such a conclusion from what appears in the record. The court was required to dispell any equivocation on petitioner's part prior to accepting a plea of guilty. The fact that this was done pointedly and directly does not, without more, establish coercion. The guilty plea proceedings were sufficiently in compliance with State v. Sisco, 169 N.W.2d 542 (Iowa 1969) and Brainard v. State, 222 N.W.2d 711 (Iowa 1974), to withstand defendant's challenge, based upon what appears in the record of said proceedings. Petitioner was given a choice between available, though harsh alternatives. State v. Hansen, 221 N.W.2d 274, 276-77 (Iowa 1974).

II. We next consider petitioner's claim that the evidentiary hearing held on his postconviction application shows that his guilty plea was in fact not voluntarily entered. In this regard, petitioner testified at said hearing that his attorney told him to make up the story of his involvement in order to satisfy the court at the guilty plea proceedings. The act of counsel in advising a defendant in a criminal case to answer plea inquiries of the court untruthfully to protect a plea bargain agreement has been recognized as a potential ground for postconviction relief. See Allison v. Blackledge, 533 F.2d 894 (4th Cir. 1976), aff'd. 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). But, in the present case, this issue turns upon the credibility of the witnesses at the postconviction hearing. Petitioner's trial counsel was called to testify at said hearing and he unequivocally denied that he had advised defendant not to tell the truth in responding to the court's inquiries. His testimony directly contradicts that of petitioner in all material respects. On the basis of this record, we cannot find that defendant has met his burden of establishing, by a preponderance of the evidence, that he was unduly pressured into pleading guilty, or that there was no factual basis for his plea. The judgment of the trial court is affirmed.

AFFIRMED.