IN THE COURT OF APPEALS OF IOWA

No. 0-412 / 90-80

FILED
DEC 27 1990
CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

331

DAVID ODERMANN,

Appellant.

Appeal from the Iowa District Court for Emmet County, Cameron B. Arnold, District Associate Judge.

Defendant appeals his conviction, following a guilty plea, for assault with intent to commit sexual abuse. **AFFIRMED.**

Raymond E. Rogers, State Appellate Defender, and Brian K. Sissel, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Lynn K. Fillenwarth, County Attorney, and Richard Meyer, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Donielson and Habhab, JJ.

OXBERGER, C.J.

David Odermann was accused of assaulting a twelve-year-old girl with the intent to sexually abuse her. He entered a plea of guilty to a charge of assault with intent to commit sexual abuse. As a part of the plea bargain, the State agreed to recommend Odermann's placement on probation for two years, with the probation conditioned upon successful completion of a Northwest Iowa Mental Health sexual abuse therapy program.

For reasons not clear from the record, a period of about thirteen months elapsed between the guilty plea and the sentencing hearing. During this period Odermann enrolled in the Northwest Iowa Mental Health sexual abuse therapy program and attended at least four therapy sessions. However, he did not successfully complete the program. The State alleges Odermann dropped out of the therapy program due to noncooperation; Odermann asserts he tried to complete the program, but confusion arose between himself and a counselor over whether any further attendance was expected of him.

When the case eventually came up for sentencing, the State recommended a sentence of incarceration rather than probation. The State relied on Odermann's failure to complete the therapy program and an OWI arrest incurred while he awaited sentencing. Odermann then moved for permission to withdraw his guilty plea on the ground the

State breached its plea agreement by recommending a sentence of incarceration. The court denied Odermann permission to withdraw the guilty plea. The court then imposed a sentence of incarceration.

Odermann has appealed his conviction. He contends he should have been allowed to withdraw his guilty plea because the State breached its plea agreement by recommending a sentence of incarceration rather than probation. The State responds that the plea agreement no longer bound it because Odermann breached the agreement by dropping out of the therapy program. Further, the State argues the court did not rely on its recommendation when making the sentencing order.

We review this case for correction of errors at law. Iowa R. App. P. 4. We find the defendant breached his obligation under the plea agreement to fully participate in the Northwest Iowa Mental Health sexual abuse therapy program. At the proceeding where the defendant entered his guilty plea, the State clearly stated the plea agreement contemplated the defendant immediately enter a program and cooperate fully with the program. Because the defendant breached the plea bargain, the State is not required to comply with the plea bargain.

We find the district court did not abuse its discretion in denying the defendant's motion to withdraw his guilty plea.

AFFIRMED.