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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed November 26, 1980
vs.	)	
ROBERT LEROY WADE,	)	0-247 62378
Defendant-Appellant.	)	

Appeal from Wayne District Court - M. C. Herrick, Judge.

Defendant appeals conviction for breaking and entering and trial court order overruling his motion in arrest of judgment, alleging that his guilty plea should not have been accepted because he did not understand the charge or the penal consequences of his guilty plea. AFFIRMED.

Michael J. Streit of Morr and Shelton, P.C., Chariton, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, Lona Hansen, Assistant Attorney General, and John W. Birdwell, Wayne County Attorney, for plaintiff-appellee.

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

DONIELSON, J.

Defendant, Robert Wade, appeals his convictions for breaking and entering in violation of section 708.8, The Code 1977, and for being an habitual offender under section 747.1, The Code 1977, and appeals the trial court order overruling his motion in arrest of judgment. Defendant asserts on appeal that he did not understand the nature of the breaking and entering charge pending against him, that he did not understand the elements that the State would be required to prove at trial, and that he did not understand the penal consequences of his guilty plea. For these reasons, defendant contends that the trial court erred in accepting his guilty plea and in overruling his motion in arrest of judgment. We affirm the trial court.

Our review is limited to corrections of errors at law. Iowa R. App. P. 4.

I.

In August, 1977, defendant was charged by information with breaking and entering a service station with intent to commit larceny in violation of section 708.8, The Code 1977. Defendant had already been convicted of three prior felonies and pleaded guilty to the breaking and entering charge as part of a plea bargain in April of 1978. After a discussion with defendant and defendant's attorney, the trial court accepted the guilty plea and later sentenced defendant to the maximum term of fifteen years on the breaking and entering charge with a minimum confinement of three years as required by the habitual offender provision, section 902.8, The Code 1979.

Defendant then filed a pro se notice of appeal and appellate counsel was appointed for him. In February, 1979, Justice Larson signed an order remanding the case to the trial court for filing of a motion in arrest of judgment. After a hearing, the trial court overruled defendant's motion in arrest and the case was then transferred to this court.

A review of the record indicates that at the time of defendant's guilty plea, he was 44 years old, had graduated from high school, and had been through felony criminal proceedings on three previous occasions. Before accepting the plea, the trial court explained to defendant that he was waiving certain constitutional rights by pleading guilty, and defendant said he understood that. The court then discussed various applicable sentences and defendant said that he understood each one. An inquiry about the plea bargain followed, and the court ascertained from defendant that there was a factual basis for the guilty plea on the breaking and entering charge. A discussion then followed about defendant's prior felony convictions, after which the court accepted

defendant's guilty plea. Apparently concerned that the charge and the elements thereof had not adequately been explained to the defendant, the county attorney read to him the code sections pertaining to breaking and entering (section 708.8, The Code 1977) and habitual offender status (section 747.1, The Code 1977). Defendant said that he understood both sections and asked to be sentenced under the habitual offender provisions of the new criminal code (section 902.8, Supplement to the Code 1977). The court then again accepted his guilty plea.

II.

Defendant contends on appeal that the trial court erred in accepting his guilty plea and in overruling his motion in arrest of judgment because he did not have a sufficient understanding of the charge and penalties when he pleaded guilty. Specifically, he maintains that he did not understand the nature of the breaking and entering charge, that he did not understand the elements that the State would be required to prove at trial, and that he did not understand the penal consequences of his guilty plea. We find that the trial court properly accepted the plea.

Iowa law as to what standard must be satisfied before a court can accept a guilty plea to a felony charge has had an interesting history. The initial standard was set forth in State v. Sisco, 169 N.W.2d 542 (Iowa 1969), where it was held that before accepting the plea, the trial court must first determine 1) that defendant understands the charge against him, 2) that defendant is aware of the penal consequences of his plea, 3) that the plea is entered voluntarily, and 4) that there is a factual basis for the plea. Sisco, 169 N.W.2d at 548. The Sisco standard was somewhat refined by the supreme court in Brainard v. State, 222 N.W.2d 711 (Iowa 1974), where it was held that there are two aspects of the determination of defendant's understanding of the charge. Brainard, 222 N.W.2d at 714. First, the judge must explain the charge, the extent of the explanation depending on the entire record, including the complexity of the charge, the defendant's education and experience, and other circumstances of the particular case. Id. The judge must then inquire into defendant's understanding of the charge. Id. The record must show that the judge personally made sufficient inquiry of the defendant to elicit responses that demonstrate defendant's understanding of the nature of the charge. Brainard, 222 N.W.2d at 715. This can best be achieved by an inquiry in which the judge relates the elements of the charge to the basic acts required to constitute the offense, since the purpose of the inquiry requirement is to determine whether the defendant

understands the law as it relates to the facts. Brainard, 222 N.W.2d at 714.

In State v. Reaves, 254 N.W.2d 488 (1977), the supreme court rejected the notion that a colloquy between the judge and the accused is the only acceptable method to determine the defendant's understanding of the charge against him and held that the accused's understanding may also be shown by defense counsel's assurances made to the court or by anything in the record that establishes such understanding. Reaves, 254 N.W.2d at 493. The Reaves decision was based on a desire to shift the focus from "courtroom litanies" to the accused's understanding of the charges against him. Reaves, 254 N.W.2d at 491. This shift in focus met with express disapproval in State v. Fluhr, 287 N.W.2d 857 (Iowa 1980), where it was held, over a strong dissent, that Iowa R. Crim. P. 8(2)(b) prevails over the Reaves decision and reinstates the Sisco-Brainard standard and most notably the Brainard requirement of an in-court exchange between judge and defendant as the appropriate means to demonstrate defendant's understanding of the charges. Fluhr, 287 N.W.2d at 866. However, the majority in Fluhr observed that the decision should not be interpreted to mean that every small omission from the colloquy between judge and defendant should result in invalidation of the guilty plea; on the contrary, only substantial compliance with the Sisco-Brainard guidelines is required. Fluhr, 287 N.W.2d at 864; see State v. Worley, No. 64629, slip op. at 3 (Iowa, filed Oct. 15, 1980). We find such compliance in the instant case.

The record indicates to us that the trial court adequately explained to defendant both the nature and elements of the breaking and entering charge and the penal consequences of pleading guilty to that charge. The court had the following discussion with defendant about the charge:

> THE COURT: Now, then, in regard to the charge of breaking and entering the Information alleges that you did break and enter on or about June 17th, 1977, in Wayne County a service station in Allerton, Iowa, which is the property of R. G. Owens with intent to commit larceny. Did you commit this offense, Mr. Wade?
>
> MR. WADE: Yes.
>
> THE COURT: Would you tell the Court what you did do on this occasion?
>
> MR. WADE: I went in the building.
>
> THE COURT: How did you get in?
>
> MR. WADE: Knocked a window out.
>
> THE COURT: And what did you do after you got into it?

MR. WADE: Rummaged around a little.

THE COURT: What was your purpose in entering the building?

MR. WADE: See if there was any money in there.

THE COURT: And you intended to steal it, did you, if you found anything?

MR. WADE: Yes.

THE COURT: You know the building they are talking about, the service station building in Allerton?

MR. WADE: Yes.

Complexity of the explanation of the charge depends upon such factors as the complexity of the charge itself, the extent of defendant's education and experience, and other circumstances of the particular case. Brainard, 222 N.W.2d at 714. Given the facts that defendant was a 44-year-old high school graduate, that he had been convicted of three prior felonies (one of which was breaking and entering), and that the charge was not overly complex, we think that the trial court adequately explained to defendant the nature of the charge and what the State would be required to prove at trial. Similarly, the record shows that the trial court's discussion of possible sentences was sufficient to inform him of the penal consequences of his guilty plea. The court explained to defendant that the maximum sentence for breaking and entering was ten years but that because defendant was an habitual offender, the maximum sentence would be either fifteen years with a minimum of three years' confinement or a maximum of forty years, depending on whether the defendant chose to be sentenced under the new or old criminal code. We find this to be an adequate and understandable explanation of the sentencing possibilities, and we reject defendant's argument that it was insufficient to inform him of the penal consequences of his guilty plea.

Moreover, we think the record indicates that the trial court, in personally addressing the defendant, made sufficient inquiry of him to elicit responses that demonstrate his understanding of the charge. In response to the court's various questions about the charge of breaking and entering with intent to commit larceny, the defendant responded that he knocked out a window, went into the service station, and intended to steal whatever money he found there. Because we think that these responses demonstrate that the defendant understood the elements of the charge, we hold that the trial court's inquiry was sufficient under Sisco and Brainard.

We also find that the court made adequate inquiry into defendant's understanding

of the penal consequences of his guilty plea. After explaining each of the various sentencing possibilities, the court asked defendant whether he understood what had just been said to him, and each time he said that he did. The court gave him ample opportunity to ask questions if in fact, as he now claims, he did not understand the matters being discussed.

In general, the claim defendant raises on this appeal is somewhat incredible. He maintains that, although he consistently indicated to the court that he understood and had no questions about what was being explained to him, in actuality he understood very little and only told the court that he understood in order to "get it over with." He claims that nothing in the record supports the conclusion that he understood the charge. However, the fact is that nothing in the record supports the conclusion that he did not understand the charge. He said again and again that he understood and answered questions put to him by the court in a manner that demonstrated his understanding of the charge. He gave the court absolutely no indication that in fact he did not understand and, absent any such indication, it was only reasonable for the court to conclude that the defendant understood what he said he understood. This is particularly true in light of defendant's age, education, and prior experience with criminal proceedings. If defendant's claim is true, it is inconceivable that he would sit passively by and plead guilty to a charge that he knew carried a penalty of at least some time in the penitentiary. For all these reasons, we affirm defendant's conviction and the trial court order overruling his motion in arrest of judgment.

AFFIRMED.