FILED 177
NOV 24 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	Filed November 24, 1981
JACKIE PIGMAN,	)	1-250 / 65664
Defendant-Appellant.	)	

Appeal from Linn District Court - Robert F. Ford, Judge.

The defendant appeals from his conviction and sentence for the crime of conspiracy to make false use of a financial instrument in violation of § 706.1, The Code. AFFIRMED.

Mark C. Meyer of Kinnamon, Kinnamon, Russo & Meyer, Cedar Rapids, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Richard Cleland, Assistant Attorney General, for plaintiff-appellee.

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

PER CURIAM

The defendant appeals from his conviction and sentence for the crime of conspiracy to make false use of a financial instrument in violation of § 706.1, The Code. We affirm.

The defendant originally pled not guilty to the above charge, but withdrew this plea and entered a guilty plea. He then filed a request to expunge the record of certain convictions from the pre-sentence report, because those convictions were obtained when the defendant was unrepresented by counsel and had not waived his right to counsel. The State has never contested that the convictions were obtained when the defendant was unrepresented. The defendant's request to expunge was denied. The pre-sentence report, which included the uncounseled convictions, was read and considered by the judge in connection with the sentencing hearing. At the sentencing hearing defendant's counsel moved to continue the sentencing, and prepare a new pre-sentence report without the convictions, and to have a different judge hear it. The trial judge denied this motion, and stated that he was not giving any consideration to, nor was he relying on, the defendant's uncounseled convictions. He then sentenced the defendant to an indeterminate sentence of five years, stating his reasons for the sentence were: (1) the presentence report (2) the nature of the offense; (3) the defendant's prior parole; and (4) the court's opinion that the defendant must be held accountable, and to protect the community.

The defendant appealed, and argues that the trial court erred in not recusing himself at the sentencing hearing, after he had read the pre-sentence report which included the prior uncounseled convictions. We disagree. The trial judge specifically stated he was not considering the uncounseled convictions in determining the sentence to be given defendant. The sources of information to be used in determing the sentence are within the judge's discretion. State v. Cole, 168 N.W.2d 37, 41 (Iowa 1969). The sentence pronounced in this case was within the statutory maximum, and the trial judge did not abuse his discretion.

AFFIRMED.