

FILED

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

Appellee,

)

Filed October 19, 1978

vs.

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GARY DEAN SNOW,

)

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Appellant.

)

Appeal from Winneshiek District Court - Frank D. Elwood, Judge.

Defendant appeals from judgment and sentence imposed for larceny in the daytime. - Affirmed.

Marion L. Beatty, of Miller, Pearson, Gloe & Burns, Decorah, for Appellant.

Richard C. Turner, Attorney General of Iowa, Raymond W. Sullins, Assistant Attorney General, and Calvin Anderson, Winneshiek County Attorney, for Appellee.

Submitted to Donelson, C.J., and Snell, Oxberger and Carter, JJ.

PER CURIAM

Defendant, Gary Dean Snow, appeals from judgment and sentence imposed upon plea of guilty to the offense of larceny in the daytime, § 709.5, The Code. Snow was charged on November 19, 1977, and his guilty plea was accepted on February 17, 1978. Thereafter, the trial court, pursuant to defendant's request, exercised its discretion to sentence him under the provisions of the newly effective criminal code as provided in § 801.5(2)(b)(2), Supplement to the Code 1977. On March 17, 1978, defendant was sentenced under § 903.1(l), Supplement to the Code 1977, to a term not to exceed two years. Defendant subsequently moved for correction of sentence under Rule 23(5), Rules of Criminal Procedure, noting that § 903.1 requires the sentencing judge to "determine the sentence, and . . . fix the period . . . within the . . . limits." Pursuant to the motion, defendant was resentenced on April 7, 1978, to a fixed term of one year and 240 days.

On this appeal defendant contends trial court committed the following errors: (1) the court placed undue emphasis on the presentence investigation and juvenile record of the defendant; (2) the court imposed an unreasonably harsh and excessive sentence in view of the defendant's age and the nature of the offense; and (3) the court improperly sentenced the defendant under § 903.1(l), Supplement to the Code 1977. We affirm the trial court.

I. Propriety of Sentencing Under § 903.1(l). The defendant was sentenced under § 903.1(l), Supplement to the Code 1977, applicable to aggravated misdemeanors, for theft of property valued at more than \$100 but less than, or equal to, \$500. Section 714.2(3), Supplement to the Code 1977. Theft of property valued at \$50 or less is fifth degree theft, a simple misdemeanor. Section 714.2(5), Supplement to the Code 1977. The defendant contends it was improper to sentence him to more than 30 days because at the guilty plea hearing he only admitted to theft of an item valued in excess of \$20, which would constitute a simple misdemeanor punishable by imprisonment not to exceed 30 days, or a fine not to exceed \$100. Section 903.1(3), Supplement to the Code 1977. At the March 17, 1978 sentencing hearing, defendant conceded that the stolen item, a carburetor, had a value of \$109. On appeal he argues that the concession made at the sentencing

hearing does not alter his claim because the court failed at sentencing to inform him of the penal consequences of the concession.

We disagree. Essentially defendant's argument is that because his February 17, 1978, guilty plea was to theft of an item valued in excess of \$20, it was error to sentence him for theft of an item valued in excess of \$100 without an explicit statement having been made by him at the guilty plea hearing (as distinguished from time of sentencing) acknowledging the value of the stolen item to be greater than \$100. Defendant relies upon State v. Sisco, 169 N.W.2d 542 (Iowa, 1969) and Brainard v. State, 222 N.W.2d 711 (Iowa, 1974) to support this claim. We feel defendant's reliance on Sisco and Brainard is misplaced, are satisfied that the guilty plea was properly taken and conclude that sentencing under § 903.1(1) was proper.

In State v. Reaves, 254 N.W.2d 488, 491 (Iowa 1977), the supreme court approved a shift away from the courtroom formalisms occasioned by Sisco and Brainard to a search for proof of an actual awareness from whatever source of the requisites to a valid plea. Adams v. State, __ N.W.2d __, (Iowa, filed August 30, 1978). The preliminary information in this case listed the value of the carburetor at \$109. The county attorney's information, consistent with the language of § 709.5, The Code, listed the item as being valued in excess of \$20. A review of the transcript of the guilty plea hearing clearly shows the plea to have been voluntarily made. Furthermore, the court informed the defendant during that hearing that the particular offense committed constituted an aggravated misdemeanor under the new criminal code and was punishable by imprisonment for a term not to exceed two years or by a fine, or by both. Also at that hearing, in response to the court's inquiry, defense counsel assured the court that he had fully informed the defendant of all his various rights. These factors taken together justified acceptance of the guilty plea and established the propriety of the subsequent sentence. State v. Reaves, supra. We are convinced that the defendant knew everything necessary to make his plea valid, and also understood that by pleading guilty and being sentenced under the provisions of the new criminal code, his maximum potential prison sentence was being reduced from five years to two years.

II. Juvenile Record and Presentence Investigation. Defendant argues the

sentencing court placed undue emphasis on his juvenile record and urges this court to adopt the State of Illinois rule that a juvenile court record may not be considered in sentencing an accused for an adult offense. The conviction on review in this case is the first adult conviction of the 18 year old defendant. The trial court ordered a presentence investigation in this case and that report, including defendant's juvenile court record, was considered by the sentencing judge. We find no error. In this state, prior to imposing sentence for an adult offense a judge may consider the juvenile record of the defendant. *State v. Davis*, 195 N.W.2d 677 (Iowa 1972); *State v. Stevenson*, 195 N.W.2d 358 (Iowa 1972).

Defendant also argues the presentence investigation report should not have been considered because it does not include certain information recommended in the A.B.A. Standards for Criminal Justice, Probation, § 2.3 (1974). The alleged deficiencies are a lack of information regarding the environment the defendant would return to if granted probation and a lack of information regarding alternative treatment programs available to the defendant. We find no error. The defendant requested to be sentenced under the provisions of the new criminal code. Section 901.2 thereof authorizes the court to order a presentence investigation when the offense is an aggravated misdemeanor. The State argues that the report did not contain information regarding probationary environments and resources because probation was not recommended. We have studied the presentence investigation report in this case and conclude it adequately complies with statutory requirements. Section 901.3, Supplement to the Code 1977. Consideration of the report was proper.

III. Lastly, we cannot agree that defendant's sentence was unreasonably harsh. Defendant was sentenced to a term of one year and 240 days. Under § 903.1(1), Supplement to the Code 1977, defendant could have been sentenced to a term of two years, and fined \$5,000 in addition. Had the court not exercised its discretion under § 801.5(2)(b)(2), Supplement to the Code 1977, to sentence the defendant under the more lenient provisions of the new criminal code, his sentence under § 709.5, The Code, would have been for an indeterminate five year term. Under the circumstances, we find no abuse of discretion in the sentence imposed.

AFFIRMED.