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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

PAUL WILLIAM DRIGGERS,	)	
Petitioner-Appellant,	)	Filed October 27, 1981
vs.	)	
THE STATE OF IOWA,	)	1-271 2-64804
Respondent-Appellee.	)	

Appeal from Black Hawk District Court - Karl Kenline, Judge.

Postconviction applicant appeals from trial court's denial of his application for postconviction relief involving challenges to guilty pleas entered to two counts of forgery in violation of section 718.1, The Code 1975, and one count of conspiracy in violation of section 719.1, The Code 1975. AFFIRMED.

Kjas T. Long of Gottschalk, Shinkle & Long, Cedar Falls, Iowa, for petitioner-appellant.

Thomas J. Miller, Attorney General of Iowa, and Thomas N. Martin, Assistant Attorney General, for respondent-appellee.

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

CARTER, J.

Postconviction applicant (hereinafter called defendant) appeals from trial court's denial of his application for postconviction relief involving challenges to guilty pleas entered to two counts of forgery in violation of section 718.1, The Code 1975, and one count of conspiracy in violation of section 719.1, The Code 1975. He contends that the record in the postconviction proceedings demonstrates that the pleas were involuntarily entered. We affirm the trial court's denial of postconviction relief.

On December 14, 1976, defendant Paul William Driggers entered guilty pleas to two counts of forgery and one count of conspiracy in violation of sections 718.1 and 719.1, The Code 1975, respectively. After negotiations the defendant and the State reached the agreement upon which these pleas were entered. It was agreed that the defendant would seek concurrent sentences for the crimes, the State would seek consecutive sentences, and the judge would not be bound ahead of time in any way as to the sentences. It was further agreed that the county attorney's office would not approach the parole board with evidence in its possession concerning any other crimes the defendant might have committed, and would file no additional charges. In accepting defendant's guilty pleas, the court explored in detail with both the defendant and the county attorney the exact meaning of the terms of the agreement, and established that the county attorney's part of the bargain was to not send anything in writing or to appear in person before the parole board. It was stated on the record, however, that if the parole board should, on its own, write to the county attorney and request any information, that that office would be duty-bound to respond.[1]

On December 30, 1976, before a different judge, defendant was sentenced to two ten-year terms for the forgeries and three years for the conspiracy; he was ordered to serve the sentences consecutively. During the sentencing hearing, a police officer testified at length concerning all of the investigation and suspicions regarding defendant's criminal activities in Iowa and several other states.

At some time after this hearing, the sentencing judge, of his own volition, sent a portion of the sentencing transcript to the warden of the men's reformatory which contained the testimony concerning other criminal activities by the defendant. This

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[1] The county attorney informed the defendant and the court that, to his knowledge, the parole board had never done so.

transcript became part of defendant's official file. As such, it became available to the staff at the penitentiary where defendant was transferred and, ultimately, to the parole board. The sentencing transcript does not contain any reference to the agreement reached at the plea hearing and, in giving testimony at the postconviction hearing, the sentencing judge did not recall whether he was ever aware of the agreement between the defendant and the county attorney's office which resulted in the defendant's entering the guilty pleas.

Pursuant to section 663A, The Code, defendant sought postconviction relief alleging that his plea was involuntary because the State violated the plea agreement and that his sentence was excessive.[2] The court found that defendant's plea was not coerced, and was voluntarily and intelligently entered, and that the plea agreement was not violated. We agree with the postconviction court.

Defendant, in support of his claim of involuntariness, asserts that because the court (acting through the judge who accepted his guilty pleas) was aware of what the county attorney had agreed not to do, it was bound to advise defendant that the court was not prohibited from transmitting adverse information about defendant to corrections officials. We find no merit in this contention. Any expectations by the defendant that the sentencing judge was in any way restricted by the plea bargain from sending matters of public record to corrections officials could not reasonably be entertained under the circumstances involved.[3] We have considered all of defendant's contentions and find that the trial court was correct in denying his application for postconviction relief.

AFFIRMED.

Donielson and Johnson, JJ., concur; Oxberger, C.J., and Snell, J., dissent.

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[2] This second ground is not now urged on appeal.

[3] In this regard we note that the judge who accepted defendant's guilty plea specifically advised him prior to that time "[Y]ou understand that really, that the county attorney's office can't bind the sentencing judge in any respect in any way . . . do you understand that?" The defendant's answer to this question was "yes, Your Honor."

OXBERGER, C.J. (dissenting)

I dissent. The trial judge who accepted defendant's guilty plea was advised that the plea was the result of a plea bargain agreement. A different judge sentenced the defendant and he did the very thing that under the terms of the plea agreement the county attorney agreed not to do, i.e., send damaging evidence of defendant's criminal past to the penitentiary officials where it is routinely forwarded to the parole board. The fact that the judge who sentenced the defendant was a different judge than the judge who accepted the guilty plea is immaterial. State v. Parrish, 232 N.W.2d 511 (Iowa 1975).

The plea bargaining process serves a useful function for our society, and for the accused. If plea bargaining is to work, principles of fairness must be adhered to by the State as well as by the defendant.

It is the duty of the court to enforce the bargain made by the prosecutor and the defendant. Both the court and the State must comply with the standard of fair play. State v. Kuchenreuther, 218 N.W.2d 621 (Iowa 1974). It is a violation of the fair play standard for the judge to do what the prosecutor bargained he would not do, in exchange for the defendant's guilty plea. The defendant in this case did not get what he bargained for.

Under such circumstances, I would allow the defendant to withdraw his guilty plea, and enter a plea of not guilty and be tried.

Snell, J., joins this dissent.