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IN THE COURT OF APPEALS OF IOWA

Filed March 31, 1987

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

SUE ELLYN HANSON,)

Defendant-Appellant.)

7-49
86-1236

346

Appeal from the Iowa District Court for Linn County (No. 17671) - Brent G. Harstad, District Associate Judge, and John F. Siebermann, Judge, (sentencing).

Defendant Sue Ellyn Hanson appeals from the judgment upon her guilty plea to theft in the fourth degree. **REVERSED.**

Charles L. Harrington, Chief Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; and Bradley V. Black, Assisant Attorney General; and Edward J. Leff and Candace J. Hein, Assistant Linn County Attorneys, for plaintiff-appellee.

Considered by Oxberger, C.J., and Hayden, and Sackett, JJ.

PER CURIAM

Defendant Sue Ellyn Hanson appeals from the judgment upon her guilty plea to theft in the fourth degree. Defendant was accused of theft for allegedly shoplifting. The trial court accepted the defendant's guilty plea to the crime charged. At the defendant's guilty plea hearing, the trial court explained the defendant's trial-related rights as follows:

> You have a right to a trial if you want it. It is up to the State to prove your guilt, beyond a reasonable doubt. If you give up the trial, you are giving up that right and the right to cross examine all the witnesses against you. You could go to jail for up to a year and be fined up to a thousand dollars or both. You cannot be forced to testify against yourself . . . .

Defendant was subsequently sentenced.

Defendant contends the plea was not voluntarily and intelligently entered under Iowa R. Civ. P. 8(2)(b)(3) and the due process clauses of the United States and Iowa constitutions. Defendant claims she was not advised of her right to a trial by jury, to counsel and to present witnesses in her behalf. The state contends there was substantial compliance.

Iowa R. Civ. P. 8(2)(b) provides:

> b. Pleas of guilty. The court may refuse to accept a plea of guilty, and shall not accept a plea of guilty without first determining that the plea is made voluntarily and intelligently and has a factual basis.
>
> Before accepting a plea of guilty, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:
>
> (1) The nature of the charge to which the plea is offered.
>
> (2) The mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered.
>
> (3) That the defendant has the right to be tried by a jury, and at trial has the right to assistance of counsel, the right to confront and cross-examine witnesses against the defendant, the right not to be compelled to incriminate oneself, and the right to present witnesses in the defendant's own behalf and to have compulsory process in securing their attendance.

> (4) That if the defendant pleads guilty there will not be a further trial of any kind, so that by pleading guilty the defendant waives the right to a trial. (emphasis added).

In State v. Feuhr, 287 N.W.2d 857, 862 (Iowa 1980), the court stated:

> . . . [T]he second paragraph of Rule 8(2)(b) states that the court accepting a guilty plea is required to both personally address the defendant "and" determine that he understands certain matters. . . . [T]he subject matter of the personal address should be each of the enumerated items which the rule requires that the defendant understand, and the mode for determining the defendant's understanding should be a personal address.

Defendant was not advised of her right to trial by jury, her right to counsel or her right to present witnesses in her behalf.

The judgment of conviction and sentence are set aside and the defendant shall be permitted to plead anew.

REVERSED.