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IN THE COURT OF APPEALS OF IOWA

DOREN S. ADAMS,	)	
Appellant,	)	Filed February 28, 1978
vs.	)	
STATE OF IOWA,	)	<u>418</u>
Appellee.	)	2-60499

Appeal from Des Moines District Court - Thomas E. Tucker, Judge.

Defendant appeals from a denial of post conviction relief wherein he seeks to set aside his guilty plea asserting the court failed to determine he understood the charge, the penal consequences of his guilty plea and that the plea was voluntary. - Affirmed.

Lawrence W. Zeringue, Burlington, for Appellant.

Richard C. Turner, Attorney General of Iowa, for Appellee.

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

PER CURIAM

Plaintiff Doren S. Adams appeals the trial court order denying his application for post conviction relief under chapter 663A, The Code. Adams asserts the trial court erred in denying his application for post conviction relief because the original trial court erred in accepting his guilty plea to the crime of carrying a concealed weapon in violation of § 695.2, The Code. On appeal Adams attacks the validity of the original plea alleging the evidence fails to show the trial court made a determination that he understood the charge, understood the penal consequences of his guilty plea and that the plea was voluntarily entered.

The procedures for acceptance of a guilty plea in Iowa are set out in *State v. Sisco*, 169 N.W.2d 542 (Iowa 1969). Before accepting the plea of guilty the trial judge must be satisfied the defendant has the requisite awareness, that the plea is voluntary, and that a factual basis exists. *Brainard v. State*, 222 N.W.2d 711 (Iowa 1972). See also *State v. Reaves*, 254 N.W.2d 488, 493 (Iowa 1977). The plea in the instant case was entered on December 16, 1974, one month after the supreme court's decision in *Brainard*. Therefore both *Brainard* and *Sisco* are applicable herein. Cf. *Wallace v. State*, 245 N.W.2d 325 (Iowa 1976).

While the colloquy enumerated in *Sisco* and *Brainard* remains a proper way of showing defendant's awareness, it is no longer the only method. *Reaves*, supra. "The question is not whether defendant learned of such penalty from the judge in a formal proceeding but whether he had knowledge as to such matter, whether it was from the judge, his lawyer or from some other source." *State v. Reppert*, 215 N.W.2d 302, 307 (Iowa 1974). While it remains the burden of the State to show an accused's awareness it may be shown by the colloquy specified in *Brainard*, by defense counsel's assurances, or by anything shown of record which establishes such awareness.

Defendant's first assertion is that there was no showing he understood the charge. The testimony of Adams's attorney at the post conviction hearing is counter to defendant's position. The attorney stated that he and defendant went over in great detail the elements of the crime of carrying a concealed weapon because in the instant case it was a "technical-type violation." After discussing the

elements, both agreed the crime had been committed. The trial court did not err in finding, through his attorney's statement, that defendant had the requisite awareness of the crime charged. **Reaves, supra; Reppert, supra.**

Defendant's second contention is that he was not aware of the penal consequences of the plea. Defendant's attorney stated his general practice was to inform each defendant of the penal consequences of the crime. He could not remember failing to do so where a defendant was charged with a felony in approximately ten years of criminal practice. Further, defendant's own response to a question from the court, was that his attorney had informed him of the penalties connected with the particular charge. We find no error. **Reppert, supra.**

Defendant's final assertion is that there was no determination that the plea was voluntary. The testimony from the December 16, 1974, hearing is dispositive of this contention also. In response to a question from the trial court as to whether the plea was voluntary on his part, defendant replied "Yes, sir". Defendant then informed the court that no threats or promises were made by anyone in order to induce the plea. Even though a plea bargain had been agreed to, defendant's attorney testified at the post conviction hearing that Adams was fully aware a deferred sentence was to be granted. The record amply supports the trial court's findings that the plea was voluntarily entered.

Affirmed.