IN THE COURT OF APPEALS OF IOWA

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84-949

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IN THE MATTER OF THE ESTATE OF RUDOLPH J. HOFFMAN, Deceased;

EDITH RIESSELMAN and IRENE BAUMHOVER,

Appellants.

Appeal from the Iowa District Court for Carroll County - Louis F. Beisser, Judge.

Appellants appeal from an order granting executor's application to lease certain farmland. AFFIRMED.

Appellants pro se.

Raymond O. Snook, Glidden, and B. L. Willis & Kent B. Willis, Lake City, for appellees.

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

SACKETT, J.

This is one of three separate appeals from orders entered in the estate of Rudolph J. Hoffman. Appellants Edith Riesselman and Irene Baumhover are two of the ten surviving children of the decedent.

Appellants were represented by legal counsel at the time of the filing of their briefs and requests for oral argument. At the time of oral argument, appellants did not have legal counsel but appeared and argued in their own behalf.

Certain issues were presented by the parties on oral argument that were not raised in their written briefs. Our review is limited to issues properly raised.

This is an appeal from the trial court's order granting the executor's application to lease farmland.

I.

Appellants first contend the district court lost jurisdication to rule on the application after a notice of appeal from a previous order construing decedent's will was filed on November 18, 1983, (Matter of Estate of Hoffman, No. 84-177).

In October of 1983, the district court entered an order construing decedent's will. It was undisputed that the will provided the land was to go equally to decedent's ten surviving children and was not to be sold for five years. The issue on appeal is that portions of the trial court's order determined that the provisions of an earlier will and codicil providing for management of the land during the 5-year period and then sale at the end of the 5-year period were controlling. Appeal was taken in November of 1983, from the October, 1983 order.

In January of 1984 the executor sought approval of a crop share lease for the land in question, and the trial court approved a 1-year crop share lease.[1]

The issue here is whether the district court retained jurisdiction to entertain an application to lease property in an estate when an issue on

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[1] Appellants in their brief complain of the granting of a 5-year lease. The trial court approved a 1-year lease. The only issue before us is the 1-year lease.

The record at sentencing indicated the defendant knew he could receive 25 years on each charge. The court explained that the plea on the charge with a firearm carried a 5-year minimum and that the sentencing court was not bound by any recommendations or agreements between defendant's attorney and the prosecutor. At sentencing defendant indicated he understood the court would determine whether the sentences were to be served concurrently or consecutively. Again the record reflects a discussion of a mandatory minimum sentence because of the firearm violation.

Defendant argues trial counsel gave him erroneous advice as to the consequences of his plea. "Mere prediction by counsel of the court's likely attitude on sentence, short of some implication of an agreement or understanding, is not ground for attacking a plea." Swanson v. United States, 304 F.2d 865, 866 (8th Cir. 1962), cert. denied, 371 U.S. 894, 83 S.Ct. 194, 9 L.Ed.2d 127 (1962), quoting Dominica v. United States, 292 F.2d 483, 485 (1st Cir. 1961).

There is nothing in the record which shows counsel's prediction of the time to be served was unreasonable. It was based on information received from a warden. Defendant claims his attorney should have checked with the department of corrections. The time actually served is frequently dependent on many variables, including the prisoner's behavior and prison population and is not necessarily predictable by anyone. Time can be shortened by good and honor time. Stovall v. State, 340 N.W.2d 265, 267 (Iowa 1983).

We affirm the district court's denial of postconviction relief and affirm petitioner's guilty plea.

AFFIRMED.