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JAN 26 1982

CLERK SUPREME COURT

Filed January 26, 1982

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA

)

Plaintiff-Appellee,

)

vs

)

RONALD LEE NELSON,

)

Defendant-Appellant.

)

Appeal from Benton District Court, Thomas M. Horan, Judge.

Defendant appeals from his conviction and sentence resulting from his plea of guilty to second-degree theft in violation of section 714.2(2), The Code 1979, challenging the procedural adequacy of the plea proceedings and his competency to enter the plea. **AFFIRMED.**

Paul A. Englander, Cedar Rapids, for defendant-appellant.

Thomas J. Miller, Attorney General, and Thomas N. Martin, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Defendant appeals from his conviction and sentence resulting from his plea of guilty to second-degree theft in violation of section 714.2(2), The Code 1979, challenging the procedural adequacy of the plea proceedings and his competency to enter the plea.

On September 27, 1979, defendant, Ronald Lee Nelson, was charged with the theft of three automobiles. Before trial, defendant's court-appointed counsel properly filed notice of his intent to invoke the defense of diminished responsibility. On November 15, 1979, a hearing was held in which defendant pleaded guilty to one of the counts of theft and to an escape charge that resulted when he attempted an escape during the period of his pretrial confinement. The two other counts of theft were dismissed in accord with the plea bargain negotiated between the prosecutor and defendant. After the hearing, the trial court ordered the compilation of a presentence investigation report and continued the sentencing of defendant until February 7, 1980. During that time defendant was to be evaluated and treated, if necessary, at the Iowa Security Medical Facility located in Oakdale, Iowa.

The evaluation report on defendant, submitted by Dr. Lara, staff psychiatrist at the Iowa Security Medical Facility was filed on January 28, 1980. The report referred to instances where defendant exhibited symptoms of paranoid schizophrenia and instances of poor judgment and distorted thinking. On February 6, 1980, the day before trial, defense counsel filed applications to have defendant's guilty plea withdrawn and to have defendant's competency to stand trial determined. Sentencing of defendant was again continued until February 14, 1980.

On February 14, 1980, an addendum to the evaluation report was filed, containing the following language:

[I]t is our opinion that Mr. Nelson was mentally capable of entering any plea of his choice. He had some understanding that when he entered his plea of guilty he would probably be dealt with leniently. Whether that comes to be, however, remains another issue, but only serves to support the opinion that he could rationally enter any plea of his choice since that might somehow redound to his benefit.

It is further our opinion that, mental illness notwithstanding, Mr. Nelson had the capacity to distinguish right from wrong and to form the requisite specific intent in relation to the charges. Mr. Nelson clearly knew that he was taking possession of cars that were not his. To the extent, however, that he was doing so to elude an imaginary dragnet must also be mentioned for fairness. One could well submit that as one reads through the narrative of what he was doing, that would make understandable sense; however, the moment one divides that into legal or psychiatric categories, there well could be obfuscations regarding the degree of responsibility. As again, he knew that the cars were not his, but that should be balanced against the context of his being pursued.

In cases of this nature, we normally would recommend some accountability to a lesser charge, whatever the court may decide on. Maybe that has happened in the sense of being charged for one car theft rather than of several.

That same day the trial court overruled defendant's application to withdraw his guilty plea, finding there were no defects in the plea proceedings and finding defendant was legally competent to stand trial and be sentenced. Defendant was then sentenced to serve a term not to exceed five years.

Defendant appeals, claiming the guilty plea proceedings were insufficient and defendant was not competent to stand trial. We find no merit in either of defendant's arguments.

Initially, we find defendant failed to preserve error with respect to any alleged deficiency in the guilty plea proceedings. A condition to appeal on alleged defects in guilty plea proceedings is to file a motion in arrest of judgment. Iowa R. Crim. P. 8(2)(d), 23(3)(a); State v. Taylor, 301 N.W.2d 692, 692-93 (Iowa 1981); State v. Worley, 297 N.W.2d 368, 370 (Iowa 1980). Failure to file a motion in arrest of judgment, when the record indicates the trial court informed the defendant of the consequences of failing to file a motion in arrest of judgment, constitutes a waiver of any defects in the plea proceedings. State v. Taylor, 301

N.W.2d at 693. Since the record in this case clearly indicates defendant was apprised of the consequences of failing to file a motion in arrest of judgment, and defendant and his counsel acknowledged the consequences, failure to file a motion within the prescribed time period bars assertion of any alleged defect in the plea proceedings on appeal. See State v. Gardner, 274 N.W.2d 328, 329-30, n.1 (Iowa 1979); State v. Taylor, 301 N.W.2d at 693. Therefore, defendant's failure to preserve error precludes our consideration of the merits of defendant's challenge to the plea proceedings.

Due to our conclusion defendant failed to preserve error with respect to his guilty plea, we do not reach the difficult question of whether there was a sufficient factual basis to establish defendant had the necessary intent to permanently deprive the owners of the possession of their cars.

Defendant also contends the trial court erred in concluding defendant was competent to stand trial. We review the trial court's conclusion to determine whether there was support in the record for the competency finding. State v. Jackson, 305 N.W.2d 420, 424 (Iowa 1981). We find substantial evidence supporting the trial court's conclusion.

The uncontradicted evidence, adduced at the competency hearing, indicates defendant was competent to stand trial and receive sentence. The evaluating psychiatrist, Dr. Lara, stated in the addendum to the evaluation report, "[defendant] was mentally capable of entering any plea of his choice," and "[defendant] had the capacity to distinguish right from wrong and to form the requisite specific intent." The trial court also conducted a dialogue with defendant from which no indication of incompetency arose. There was abundant evidence before the trial court indicating defendant was competent to stand trial and receive sentence and only minimal evidence to the contrary. Since a

competency hearing was held and no evidence of defendant's incompetency was introduced subsequent to the hearing, compare State v. Pedersen, 309 N.W.2d 490, 495-96 (Iowa 1981) with State v. Jackson, 305 N.W.2d 420, 425 (Iowa 1981), and we find substantial evidence supporting the trial court's finding of competency, the ruling is affirmed, as is defendant's conviction.

AFFIRMED.