FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Appellee,

v.

ROBERT DEAN WIEBRAND,

Appellant.

Filed September 9, 1977

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Appeal from Cerro Gordo District Court - J. W. Frye, Judge.

Appellant, convicted of committing lascivious acts, appeals claiming that trial court abused its discretion in sentencing him without resolving whether he suffers from an organic brain dysfunction. Affirmed.

B. Michael Dunn, of Mason City, for appellant.

Richard C. Turner, Attorney General, Thomas D. McGrane, Assistant Attorney General, and ClaytonL. Wornson, Cerro Gordo County Attorney, for appellee.

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

PER CURIAM

Defendant, Robert Dean Wiebrand, stands convicted of committing lascivious acts with a person under the age of 16 years, in violation of section 725.10, The Code. On appeal he claims only that trial court abused its discretion in sentencing him without resolving whether he suffers from an organic brain dysfunction. We find defendant has sustained no harm, and affirm.

Subsequent to the verdict of guilty, but before sentencing, defendant applied to the trial court for psychiatric evaluation. The report made pursuant to the court ordered evaluation indicated that there was a "possibility that [defendant] may have some organic brain dysfunction. . . . " Detection of such a dysfunction would require additional evaluation. The report concluded, however, by stating "[defendant] is not mentally ill at this time."

The record does not reveal that defendant made any request to trial court for further evaluation. Consequently, it is not clear that the error now claimed may be effectively asserted on appeal. See State v. Burt, 249 N.W.2d 651, 654 (Iowa 1977); State v. Knutson, 234 N.W.2d 105, 107 (Iowa 1975). Nevertheless, we choose to proceed to the merits.

Just as trial court has no statutory duty to order a psychiatric evaluation in the first instance, State v. Youngbear, 229 N.W.2d 728, 735 (Iowa 1975), we find that chapter 789.A, The Code, imposes no duty to order followup evaluations. The situation here is similar to that in State v. Knutson, supra at 108, where it was noted that extensive psychiatric evidence was already available to the sentencing judge. We observe that in this case such evidence was likewise already available.

Moreover, after this appeal was perfected, the Supreme Court ordered a neurological examination of defendant. In a letter addressed to defendant's counsel on appeal, the examining doctor states, "[a] neurological examination was performed and was entirely normal." The letter explains that further tests were not done, because none were specifically ordered, and there was no history supplied to indicate the need for such tests. Thus, the evidence obtained subsequent to sentencing, upon the order of the Supreme Court, indicates no need for further evaluation.

We find no merit in defendant's claim of error.

AFFIRMED.