FILED
DEC 28 1977
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed December 28, 1977
v.	)	
RANDALL CLINT GINN,	)	
Appellant.	)	325 60569

Appeal from Polk District Court - Ray Hanrahan, Judge.

Defendant appeals from trial court's refusal to allow him to withdraw his plea of guilty to the charge of statutory rape under section 698.1, The Code. Affirmed.

Ted E. Marks and Joseph Z. Marks, of Des Moines, for appellant.

Richard C. Turner, Attorney General, and Dan Johnston, Polk County Attorney, for appellee.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

ALLBEE, C.J.

Defendant, Randall Clint Ginn, appeals from trial court's refusal to allow him to withdraw his plea of guilty to the charge of rape under § 698.1, The Code.

Defendant was indicted for participating with Gary Davis in the rape of a girl the age of 14 years, 8 months and 17 days. He initially pleaded not guilty, then withdrew that plea, and on January 12, 1977, entered a plea of guilty. The county attorney had agreed, as part of the plea bargain, to not resist probation. (Tr. 2.)

During the plea litany, trial court informed defendant that the court would not be bound by any agreement between the county attorney and defendant, and that the court would not "absent any great cause being shown for it, permit [defendant] later to withdraw [his] former guilty plea and plead not guilty." (Tr. 14.) Defendant balked at entering the guilty plea under those conditions but trial court refused to accept a plea under any others. (Tr. 15.) A recess was taken; after the hearing was reconvened this exchange (Tr. 15-16) took place:

> MR. JOSEPH MARKS: Your Honor, I would like to interrogate the defendant with respect to his understanding of what the Court's statement was.
>
> Do you understand that the Court has said that he will order a pre-sentence investigation and that he would not be bound by the recommendation of the County Attorney, so that in the event that after reading the pre-sentence investigation and studying this matter further the Court determines that some other penalty should be provided other than that for which we have previously negotiated and agreed, that the Court would impose that sentence and would not permit you to withdraw your plea of guilty. Do you understand that, Randy?
>
> THE DEFENDANT: Yes.
>
> MR. JOSEPH MARKS: And is it your desire to, in the light of what the Court has told you, that you cannot withdraw the plea once he accepts it, are you willing to proceed with the plea of guilty?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Mr. Ginn, are you satisfied with the advice and services of your attorney in this case?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Now, in view of all these things that we have discussed, is it still your desire to plead guilty to this charge?
>
> THE DEFENDANT: Yes.

I. Defendant, in his brief, appears to fault trial court for failing to honor the agreement between defendant and the State. He claims that he relied upon the plea bargaining, and that his reliance vitiated the voluntary nature of the plea. This argument is completely inconsistent with the colloquy set out above. Defendant was clearly informed that the judge was not bound by the bargain, in accordance with Brainard v. State, 222 N.W.2d 711, 722 (Iowa 1974), and that defendant would not be allowed to withdraw his plea. He acknowledged an understanding of those facts. This record permits no doubt. Defendant entered his plea voluntarily.[1]

Defendant also complains that trial court failed to exercise its discretion in sentencing him, but rather followed a predetermined policy requiring jail sentences in forcible rape cases. There is no basis for this assertion in the record. Beyond that, it has no bearing on whether defendant's plea was voluntary. Rather, the contention is a possible ground for attacking a mechanical approach to sentencing. See Woosley v. United States, 478 F.2d 139, 143 (8th Cir. 1973). Defendant makes no such assault on the sentence, but complains only of trial court's refusal to allow withdrawal of the guilty plea. His reliance on the argument is misplaced.[2]

II. Defendant also suggests that trial court's failure to honor the plea bargain in which defendant agreed to testify against a co-defendant denied him due process. In support of the contention, he cites Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971), and cases relying on that decision. But Santobello v. New York has no relevance to this question. That case involved a breach of a plea bargain by the prosecutor. Here there was no such breach.[3] Trial court specifically informed

[1] The plea was entered without an admission of guilt, in accordance with North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970). (See Motion to Withdraw Plea of Guilty, X. 30, 32.) While defendant does not raise the issue, we note that trial court properly relied upon the minutes of testimony attached to the indictment to determine that a factual basis existed. (Tr. 7.) See State v. Johnson, 234 N.W.2d 878, 879 (Iowa 1975).

[2] We note that a challenge to the sentence imposed here would be unsuccessful. The sentence is within the statutory limits, and no abuse of discretion is shown in the record. See State v. Grgurich, 253 N.W.2d 605 (Iowa 1977).

[3] We are aware that trial court learned of an assistant county attorney's recommendation of "hard time." (Tr. 18.) This recommendation was contrary to the plea bargain reported to trial court at the taking of the plea. (Tr. 2.) Trial court purged itself of any possible taint by its declarations and by ordering a supplemental pre-sentence report. Moreover, the plea bargain was reaffirmed by Assistant County Attorney Blink.

defendant that the court was not a party to the plea bargain and would not be bound by it. Defendant acknowledged trial court's stance, and proclaimed an understanding of it.

Under the principles repeated in State v. Watts, 225 N.W.2d 143, 146 (Iowa 1975), trial court did not abuse its discretion in refusing to allow defendant to withdraw his guilty plea.

AFFIRMED.