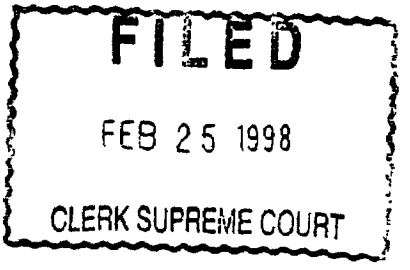
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IN THE COURT OF APPEALS OF IOWA

No. 8-041 / 97-0915
Filed February 25, 1998



STATE OF IOWA,
Appellee,

vs.

STEPHEN J. PENNING,
Appellant.

Appeal from the Iowa District Court for Kossuth County, John P. Duffy and Patrick M. Carr, Judges.

Stephen Penning appeals from the sentence imposed pursuant to his guilty plea to possession of marijuana with intent to deliver in violation of Iowa Code section 124.401(1)(d) (1995). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Christopher Cooklin, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, David Skilling, County Attorney, and Patrick Shey, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Streit and Vogel, JJ.

PER CURIAM

Defendant, Stephen Penning, appeals from the sentence imposed following his guilty plea to the charge of delivery of a controlled substance (marijuana). Penning asserts the district court misunderstood the sentencing portion of the plea agreement and, therefore, imposed an improper sentence. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court rule 9.

Penning was charged with two counts of delivery of a controlled substance after his sale of marijuana to a confidential informant for Kossuth County. Pursuant to a plea agreement, he filed a written guilty plea on November 19, 1996. In the plea agreement the State agreed to recommend probation. At the plea hearing on January 21, 1997, Penning decided not to plead guilty and the court set the trial for March 27, 1997. On March 31, 1997 the court held another plea hearing. The new plea agreement was that Penning would plead guilty to one count, the State would dismiss the other, and the State "would not seek sentencing enhancements" on the first count. The plea was not made pursuant to Iowa Rule of Criminal Procedure 9. The court asked Penning if he understood "the ultimate penalty you will receive is within the sole discretion of the Court and that that will be determined by the Court alone? . . ." Defendant expressed his understanding.

At the sentencing hearing, the presentence report recommended incarceration. The investigating officer for the report noted his understanding of the State's

recommendation pursuant to the initial plea bargain. The State, referring to the report, stated:

> . . . I would certainly have to say that if there's been some sort of plea agreement . . . that we would still make that recommendation, and we make that recommendation in light of [the presentence investigation's] recommendation that Mr. Penning is incarcerated.

In pronouncing a sentence of incarceration, the court set forth the factors it considered. Among them were the recommendations of the State and the presentence investigation "both of which are for incarceration." The court gave both attorneys and Penning opportunities to bring anything further before the court." No one raised any objection to the court's decision to incarcerate Penning. On appeal, Penning argues the court misunderstood the State's recommendation and, therefore, an improper sentencing factor crept into the proceeding. He asserts illegal, void, or procedurally defective sentences are not subject to the usual requirements of error preservation.

We review the court's sentence for an abuse of discretion. *State v. Moreland*, 252 N.W.2d 465, 466 (Iowa 1977). The sentence imposed was within the bounds of the statutory sentence. It was not illegal, void, or procedurally defective. Penning was obligated to raise an objection to the court's sentence and the alleged misunderstanding during the sentencing hearing. The purpose of this obligation is "to give the trial court the opportunity to rule on the issue." *State v. Green*, 315 N.W.2d 854, 855 (Iowa App. 1981). Because he did not object at the time, Penning has waived the issue and cannot raise it for the first time on appeal. *Id.*

AFFIRMED.