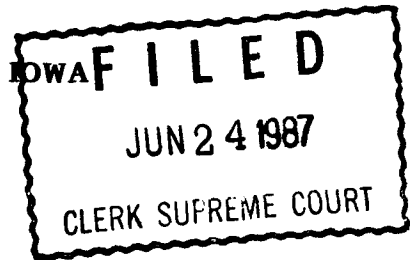


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

HERMAN HARMON,)

Defendant-Appellant.)

7-207
86-1004

218

Appeal from the Iowa District Court for Tama County (No. CR 2148),
L. Vern Robinson, Judge.

The defendant appeals from the district court order sentencing him to two years in prison after he entered a plea of guilty to the charge of theft in the third degree. **AFFIRMED.**

Robert W. Thompson of Reinbeck for defendant-appellant.

Thomas J. Miller, Attorney General; Thomas D. McGrane, Assistant Attorney General; and Richard Vander Mey, Assistant County Attorney, for plaintiff-appellee.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ.

PER CURIAM

The defendant appeals his prison sentence imposed by the Tama County District Court. He contends the prosecutor did not follow the plea bargain, and the trial court erred in not advising him it would not follow the plea bargain. We affirm.

In the written guilty plea the defendant said:

I understand that upon my plea of guilty the county attorney will recommend the following sentence as a plea agreement: None, except that sentence shall run concurrently with any sentence issued from Black Hawk County.

At the sentencing hearing, defense counsel said:

. . . We would urge the court to follow Mr. Imhoff's recommendation and urge the court to follow the plea agreement that had been struck between Mr. Bauch and the State, and that Mr. Harmon receive a concurrent suspended sentence in this matter and be placed on probation and be allowed to return to Colorado.

Defense counsel misperceives the meaning of the plea bargain. He concludes that the agreement was for an identical sentence in Tama County as in Black Hawk and that the two run concurrently.

However, the agreement provides the "sentence shall run concurrently with any sentence issued from Black Hawk County."

He did not at trial nor does he here urge that the plea bargain be upheld on its terms that is that the probation sentence in Black Hawk County and the prison sentence in Tama County run concurrently.

We deny the defendant the relief he seeks on appeal to mandate a probation sentence in Tama County because the plea bargain did not call for such a sentence.

We also reject the defendant's second issue; the trial court erred in not advising him (the defendant) it would not follow the plea bargain.

Rule 9, Iowa Rules of Criminal Procedure provides:

If, at the time the plea of guilty is tendered, the court refuses to be bound by or rejects the plea agreement, the court shall inform the parties of this fact, afford the defendant the opportunity to then withdraw his or her plea. . .

The record in this case does not contain any transcript of the plea of guilty hearing, so the court is unable to determine whether the trial judge complied with Rule 9, Iowa Rules of Criminal Procedure. The duty to prepare an adequate record is on the appellant. State v. Stanley, 344 N.W.2d 564, 569 (Iowa App. 1983). Failure of the appellant to provide an adequate record is deemed a waiver of the issue. Id.

Rule 22.3, Iowa Rules of Criminal Procedures, provides the manner the trial judge shall conduct the sentencing hearing. It does not impose a duty on the trial judge to repeat the procedure outlined in Rule 19 concerning the plea bargain. It does require the trial judge to inquire whether or not there was any legal reason why sentence should not be pronounced at this time. The trial judge complied with this rule.

We hold the trial judge did not err in failing to advise the defendant at the sentence hearing he would not be bound by the plea bargain.

AFFIRMED.