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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed December 28, 1977
vs.	)	
MICHAEL JAMES SIMMONS,	)	320
Appellant.	)	60244

Appeal from Polk District Court - Thomas A. Renda, Judge.

Defendant charges his guilty plea was accepted by the trial court without a factual basis established in the record and without his understanding the uttering charge filed against him. He attacks also the trial court's refusal to allow him to withdraw his plea at sentencing. - Affirmed.

Richard C. Turner, Attorney General of Iowa, J. Susan Carney, Assistant Attorney General, and Dan Johnston, Polk County Attorney, for Appellee.

Robert Wright and Naomi S. Mercer, of Des Moines, for Appellant.

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

PER CURIAM

Defendant Michael James Simmons appeals his guilty plea conviction on an uttering charge in violation of § 718.2, The Code 1975. He argues his plea was entered without a factual basis and without his understanding the charges filed against him. Additionally, he attacks the refusal of the trial court to allow him to withdraw his plea at sentencing and the trial court's consideration in sentencing of his subsequent arrest on another charge. We affirm.

Under § 718.2, The Code, "... the offense of uttering and publishing is proved by evidence of offering to pass the instrument to another person, declaring or asserting, directly or indirectly by words or actions, that it is good." *State v. Meeks*, 245 Iowa 1231, 1238, 65 N.W.2d 76, 79 (1954). Simmons, in colloquy with the trial judge, denied passing the check. In response to the judge's inquiry "Explain to me what you did," Simmons said he found a billfold containing several checks, some of which were signed, he thought. He presented them to a grocery attendant with the query "Could this check be cashed?" The attendant asked for identification, whereupon Simmons presented the false identification from the "found" billfold. Section 718.2 requires nothing more. Simmons "offered" to pass the check; further, he provided the requested identification, thereby representing the check was his, and good. He told the judge he knew that the check belonged to someone else and that he "probably" would have accepted the money if the clerk would have cashed the check. It has long been established that the uttering need not be successful, that is, that someone actually be defrauded. *State v. Bolds*, 244 Iowa 278, 283, 55 N.W.2d 534, 536 (1953). The intention to defraud is sufficient. The record adequately establishes Simmons' intent by his words and actions.

Simmons maintains that the trial court failed to determine whether he understood the charge. In *State v. Reeves*, 254 N.W.2d 488, 493 (Iowa 1977) the court said:

Unless something causes, or reasonably should cause, the trial judge to believe otherwise he may rely on defense counsel's assurance that an accused has been advised of, and is aware of everything required by **Sisco**.

Simmons stated he understood the charge; his counsel stated he had explained the charge to Simmons. There is no evidence to indicate Simmons did not understand

the charge.

Simmons seeks a reversal also on the ground that since he anticipated he would "be sentenced to ADAPT" the trial court should have allowed him to withdraw his guilty plea when it became apparent a prison sentence was contemplated. The denial of the withdrawal was, according to Simmons, tantamount to coercing his plea. We note the trial judge at the guilty plea hearing fully informed Simmons of the potential ten year prison term and that he would not be bound by any plea negotiation. At that time the court said the sentence would be based on the presentence report. We hold the plea was voluntarily tendered in conformity with *State v. Townsend*, 238 N.W.2d 351, 357 (Iowa 1976).

Alternatively, Simmons claims he should have been allowed to withdraw his plea since he was using drugs at the time it was entered. At the plea hearing Simmons informed the court that he was taking the drugs prescribed by ADAPT. He offers no evidence to support his contention these drugs would have affected his ability to understand the proceeding and to voluntarily participate. We cannot presume that the drugs prescribed by the drug treatment facility would impair his senses to such an extent. The statements of the defendant at the time of the plea hearing, the statements of the trial judge at the time of the motion to withdraw, and the statements of defense counsel all negate this assertion.

Simmons claims it was error for the sentencing court to consider another charge filed subsequent to the indictment in the present case. In *State v. Noonan*, 246 N.W.2d 236, 237 (Iowa 1976) the supreme court specifically approved such a consideration.

We affirm.