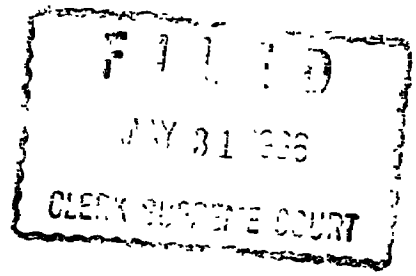
IN THE COURT OF APPEALS OF IOWA

No. 6-270 / 95-1524



STATE OF IOWA,

Plaintiff-Appellee.

vs.

RUSSELL KEVIN MAHAN,

Defendant-Appellant.

Appeal from the Iowa District Court for Calhoun County, Gary L. McMinimee, Judge.

Russell Mahan challenges the sentence imposed upon his guilty plea to the crime of escape. **AFFIRMED AND REMANDED.**

Linda Del Gallo, State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, and Cynthia Voorde, County Attorney, for appellee.

Considered by Sackett, P.J., and Cady and Streit, JJ. Vogel, J., takes no part.

PER CURIAM.

This is an appeal by a defendant challenging his sentence for the crime of escape, in violation of Iowa Code section 719.4(1) (1993). In a memorandum opinion pursuant to Iowa Supreme Court Rule 9, we affirm his sentence, but remand for the preparation of a presentence investigation report.

Defendant Russell Mahan pled guilty to a charge of escape. Mahan agreed to be sentenced at the time he entered his plea. He waived a presentence investigation report (PSI). The court sentenced him to a term of incarceration not to exceed five years, to run consecutively to the sentence he was already serving. In the sentencing order, the court stated:

> The Court hereby gives notice that the defendant may be eligible for parole before his sentence is discharged; for reasons stated on the record, the Court determined that the defendant is not eligible for work release or parole until he has discharged one-half of his sentence of incarceration; the Court has no specific recommendation regarding whether defendant should be paroled.

Mahan now appeals his sentence.

I. Mahan contends the district court erred by allowing him to waive the PSI. In *State v. Brown*, 518 N.W.2d 351 (Iowa 1994), the supreme court found the preparation of a PSI is mandatory under Iowa Code section 901.2. *Id.* at 352. Mahan does not ask for resentencing, but does ask that the case be remanded for preparation of such a report. One purpose of the PSI is to include suggestions for planning by use

by correctional authorities subsequent to sentencing. *Id.* We find the case should be remanded and direct the district court to order a PSI for Mahan.

II. Mahan also claims the district court erred by making reference to his work release or parole eligibility in its judgment entry. He believes the timing of his work release or parole should be determined by the parole board, and the court did not have authority to make this statement.

In the plea proceedings, defendant admitted he had previously been convicted of a felony, and had escaped while serving his sentence for that felony. Thus, the mandatory sentence provided for by section 902.11 applied. The court's statement merely sets forth the provisions of section 902.11, and gave defendant notice of the affect of this statute on his sentence.

We conclude the district court was not improperly determining the timing of Mahan's work release or parole. We determine there is no need to remand this case so the language in question may be stricken from the judgment entry.

We affirm defendant's conviction and sentence for the crime of escape. However, we remand for the preparation of a presentence investigation report. Costs of this appeal are assessed one-half to each party.

AFFIRMED AND REMANDED.