FILED
JAN 26 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

HECTOR REYNALDO LUNA,)

Defendant-Appellant.)

Filed January 26, 1983

2-427
68139

Appeal from Cerro Gordo District Court, Ralph F. McCartney, Judge.

Defendant appeals from his conviction on two counts of sexual abuse in the third degree in violation of Iowa Code section 709.4. AFFIRMED.

John R. Roehrick, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General, and Marcia Mason, Assistant Attorney general, for plaintiff-appellee.

Considered en banc.

PER CURIAM

Pursuant to a plea bargain agreement defendant entered a plea of guilty to two charges of sexual abuse in the third degree in violation of Iowa Code section 709.4. As part of the agreement the State suggested that the court recommend confinement at a mental health facility rather than the men's reformatory. Defense counsel acknowledged in defendant's presence that the court lacked statutory authority to designate the place of confinement. See Iowa Code § 902.5. The trial court accepted the pleas and sentenced defendant to two consecutive prison terms not to exceed ten years each. Using language suggestive of an order, the court recommended confinement at a mental health facility, but defendant was instead sent to the men's reformatory at Anamosa by the director of the division of adult corrections.

Defendant asserts on appeal that the plea bargain to which he agreed involved an unfulfillable promise and that his guilty pleas were therefore involuntary. However, he was informed of the requirement of Iowa R. Crim. P. 8(2)(d) that any challenge to the validity of his guilty pleas must be raised by timely motion in arrest of judgment. His failure to file such a motion now precludes him from challenging the validity of the plea proceeding on appeal. See Iowa R. Crim. P. 23(3)(a); State v. Worley, 297 N.W.2d 368 (Iowa 1980). In any event we find no indication that the State failed to fulfill terms of the plea bargain agreement or misled defendant as to its effect. We therefore affirm defendant's conviction.

AFFIRMED.