FILED
DEC 29 1993
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-623 / 93-644

STATE OF IOWA,

Plaintiff-Appellee,

vs.

VERONICA J. MHOON,

Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Dennis D. Damsgaard, Senior Judge.

The defendant appeals from the sentence imposed by the district court following her guilty plea for extortion pursuant to Iowa Code section 711.4 (1991). **AFFIRMED.**

Barbara H. Liesveld of Thinnes & Liesveld, Cedar Rapids, for appellant.

Bonnie J. Campbell, Attorney General, Mary Tabor, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Peter B. Newell, Assistant County Attorney, for appellee.

Heard by Oxberger, C.J., Habhab, J., and Perkins, S.J.*

Senior judge from the 5th Judicial District serving on this court by order of the Iowa Supreme Court.

HABHAB, J.

The defendant, Veronica Mhoon, appeals from the sentence imposed by the district court. Mhoon was charged by trial information with second-degree robbery in violation of Iowa Code section 711.3 (1991). The trial information was later amended to charge Mhoon with the crime of extortion in violation of section 711.4(1). Mhoon plead guilty to the charge of extortion. The district court sentenced her to a prison term not to exceed five years. Mhoon appeals. We affirm.

Mhoon's first claim is that the district court failed to give its reasons for imposing the sentence. Iowa Rule of Criminal Procedure 22(3)(d) requires a trial court to state on the record its reason for selecting a particular sentence. A sentencing court can be "terse and succinct in stating reasons for the sentence it selected." State v. Victor, 310 N.W.2d 201, 205 (Iowa 1981).

The sentencing court stated:

> [T]hese are very serious crimes when you threaten somebody else and threaten to do physical harm. And with your past record you have a complete disregard for the law, and people always get hurt one way or the other when you commit crimes, and people have a right to be protected, and that's one of the duties of law enforcement agencies and the court is to protect people from further crimes.
>
> Also, when a sentence is passed out it is believed that it not only causes -- acts as a deterrent to the person who committed the crime, but acts as a deterrent to other people who hear about it and they are not inclined to commit a crime like that.

We find the district court complied with the requirements of Rule 22(3)(d).

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Mhoon next claims the district court relied on the original charge of second-degree robbery in sentencing the defendant on her guilty plea to the lesser charge of extortion. It is impermissible for a court to "impose a severe sentence for a lower crime on the ground that the accused actually committed a higher crime unless the facts before the court show the accused committed the higher crime or the defendant admits it." State v. Thompson, 275 N.W.2d 370, 372 (Iowa 1979).

The decisions of the trial court are cloaked with a strong presumption in their favor, and until the contrary appears, the presumption is that the discretion of the trial court was rightfully exercised. State v. Hansen, 344 N.W.2d 725, 730 (Iowa App. 1983) (citing State v. Pappas, 337 N.W.2d 490, 494 (Iowa 1983)). To overcome this presumption of regularity requires an affirmative showing of abuse, and the burden of so showing rests upon the party complaining. Id.

Mhoon notes both the prosecutor and the defense attorney made reference to the threat of a gun in the commission of the crime. Mhoon states there was no fact in evidence which substantiated the presence of a gun. Mhoon claims that the trial court's reference to Mhoon threatening to do physical harm shows the trial court considered an improper factor, i.e. whether Mhoon was armed. We find no merit in this argument. Threatening to inflict physical harm on another individual is an element

of the crime of extortion, as well as the crime of second degree robbery. See Iowa Code §§ 711.1, 711.4. We do not believe the trial court's mention of a threat to do harm suggests the sentencing court relied on the higher charge when it sentenced Mhoon to prison instead of granting probation.

Mhoon's final claim is the sentencing court abused its discretion in sentencing her to a prison term not to exceed five years. She claims the sentencing court failed to take into account she has three children in her care, her substance abuse treatment and her church involvement. We disagree.

The record is clear the sentencing court was aware of these factors, but found them less persuasive than the factors favoring a prison term. We note among the factors favoring a prison term is the nature of the offense and Mhoon's twenty-seven previous convictions.

A sentence imposed within the statutory limits, will be set aside only for abuse of discretion. State v. Neary, 470 N.W.2d 27, 29 (Iowa 1991); State v. Gibb, 303 N.W.2d 673, 687 (Iowa 1981). An abuse of discretion will be found only when the discretion exercised by the sentencing court is on grounds or for reasons clearly untenable or to an extent clearly unreasonable. Neary, 470 N.W.2d at 29.

We find the district court did not abuse its discretion in refusing to grant Mhoon probation.

AFFIRMED.