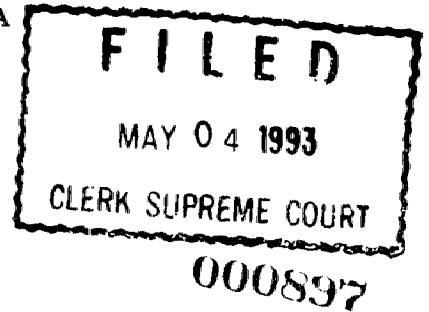


IN THE COURT OF APPEALS OF IOWA

No. 3-137 / 92-1016



STATE OF IOWA,

Appellee,

vs.

GREGORY LEE WILLIAMS,

Appellant.

Appeal from the Iowa District Court for Webster County,
Fredrick E. Breen, Judge.

Defendant appeals from the sentence entered following
his guilty plea for domestic assault as a habitual offender
in violation of Iowa Code sections 708.2A(2)(b) and
708.2A(3)(a). **AFFIRMED.**

Blake Parker of Parker & Fors, Fort Dodge, for
appellant.

Bonnie J. Campbell, Attorney General, Richard A.
Williams, Assistant Attorney General, James J. Koll, County
Attorney, and James E. Fitzgerald, Assistant County
Attorney, for appellee.

Heard by Oxberger, C.J., and Donielson and Sackett, JJ.

000898

PER CURIAM.

Defendant-appellant Gregory Lee Williams appeals a sentence entered following his plea to domestic assault as a habitual offender in violation of Iowa Code sections 708.2A(2)(b) and 708.2A(3)(a). Defendant contends he was presentenced and denied due process. We disagree and affirm.

Defendant was originally charged under section 708.2A(2)(c) domestic assault causing bodily injury of a habitual offender, an aggravated misdemeanor. A hearing was set for September 27, 1991, when it was expected defendant would enter a guilty plea. Defendant failed to appear. The judge prior to September 27, 1991, made notes indicating defendant would be sentenced to one year in jail with all but ninety days suspended.

The matter was reset and the defendant was then going to plead. The plea was aborted because the State could not establish an element of the offense. Then defendant pled to the current charges which are serious misdemeanors.

During the sentencing phase, the court received testimony from both defendant's ex-wife and defendant. His attorney spoke on his behalf as well. When asked if he wished to address the court after having testified, the defendant indicated he did not desire to do so. The court also gave defendant and his attorney the opportunity to review the pretrial release report which the court had reviewed.

Defendant was sentenced to one year in jail with all but ninety days suspended.

The defendant contends his due process rights were violated because the court ordered the same sentence for a serious misdemeanor as the court's notes revealed it would have ordered for an aggravated misdemeanor.

A sentencing judgment "will not be disturbed . . . unless there is a showing of abuse of discretion, procedural conduct prejudicial to defendant, circumstances which manifest inherent unfairness and injustice, or conduct which offends the public sense of fair play." State v. Ashley, 462 N.W.2d 279, 281 (Iowa 1990); State v. Delano, 161 N.W.2d 66, 74 (Iowa 1968).

The defendant's argument assumes punishment for a lesser-included offense must be less severe than punishment for the greater offense. The nature of the offense is but one of the many factors to be considered in passing sentence. See State v. Kendall, 167 N.W.2d 909, 911 (Iowa 1969).

A judge has broad discretion in selection of a sentencing option in a given case. State v. Peckenschneider, 236 N.W.2d 344, 348 (Iowa 1975). On appellate review the judge's sentence ordinarily is upheld even if the most severe sanction is selected unless an abuse of discretion is shown. State v. Farnum, 397 N.W.2d 744, 749 (Iowa 1986). The sentencing judge considered many factors in imposing the sentence he

did. His considerations far exceed the minimum requirements stated in State v. Dvorsky, 322 N.W.2d 62, 67 (Iowa 1982).

AFFIRMED.