IN THE COURT OF APPEALS OF IOWA

No. 7-508 / 96-1789

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FILED
OCT 29 1997
CLERK SUPREME COURT

STATE OF IOWA,
Appellee,

vs.

RICHARD ALLEN BOWMAN,
Appellant.

Appeal from the Iowa District Court for Polk County, Carol S. Egly, Judge.

Defendant appeals the sentence imposed upon his conviction of domestic abuse assault causing bodily injury in violation of Iowa Code section 708.2A(2)(b) (1995).

AFFIRMED.

Kermit L. Dunahoo of the Dunahoo Law Firm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, John Sarcone, County Attorney, and Mark Sandon, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Vogel and Mahan, JJ.

VOGEL, J.

Defendant, Richard Bowman, appeals the sentence imposed upon his conviction of domestic abuse assault causing bodily injury in violation of Iowa Code section 708.2A(2)(b) (1995). He argues the district court abused its discretion in imposing sentence following the revocation of his deferred judgment.

Background facts. Bowman pleaded guilty to domestic abuse assault causing bodily injury and the district court deferred judgment. The court imposed a one-year period of probation and required defendant to complete seventy hours of community service and a twenty-six week batterer's education program.

In September 1995, Bowman's probation officer reported that Bowman had not contacted him. After a hearing, the court found Bowman had not complied with the terms of his probation and revoked his deferred judgment. The court sentenced Bowman to 365 days in jail, all but two days suspended. The court placed Bowman on probation for a period of one year and ordered him to participate in the batterer's education program and reside at the Fort Des Moines Residential Facility until maximum benefits are obtained.

Scope of review. Our scope of review for defects in sentencing procedure or for a sentence outside statutory limits is for corrections of errors at law. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). "A sentence will not be upset on appellate review unless the defendant demonstrates an abuse of trial court discretion

or a defect in the sentencing procedure, such as trial court consideration of impermissible factors." *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995) (citing *State v. Wright*, 340 N.W.2d 590, 592 (Iowa 1983)); *see State v. Dolan*, 496 N.W.2d 278, 279 (Iowa App. 1992). Iowa Rule of Criminal Procedure 23(5)(a) provides that an illegal sentence may be corrected at any time.

Revocation of deferred judgment. Bowman contends his sentencing after revocation of the deferred judgment was too severe as he had no prior criminal record and because the victim partially recanted her inculpatory statement to the police. He further argues the pitfalls encountered by a defendant who waives representation at plea proceedings, and who then must live with the sentence imposed after revocation of a deferred judgment.

A court has the authority under Iowa Code section 708.2A(9) to enter a deferred judgment or sentence and to place a defendant on probation. *Id.* The court may also suspend a sentence and place a defendant on probation pursuant to any terms or conditions it requires "including commitment to an alternate jail facility or a community correctional residential treatment facility for a specific number of days to be followed by a term of probation . . . ." Iowa Code § 907.3(3). The court, upon a showing defendant is not cooperating with the probation or does not respond thereto, may "withdraw the defendant from the program, pronounce judgment, and impose any sentence authorized by law." Iowa Code § 907.3(2); *Dolan*, 496 N.W.2d at 279.

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Bowman has failed to comply with the conditions of his July 1995 probation. He did not report to a probation officer, complete seventy hours of community service, nor did he complete the twenty-six week batterer's education program. The court specifically found Bowman "well knew he was ignoring his responsibilities to the Court under the probation agreement" and that Bowman was a "poor candidate for probation because he's unable to be supervised."

We find the district court did not abuse its discretion as it withdrew the deferred judgment based on serious violations of Bowman's probation. We find the court appropriately selected the one-year sentence, suspending all but two days, ordered Bowman be placed at the Fort Des Moines facility to complete the twenty-six week batterer's education program, reinstated the community services requirement, while also entering a no-contact order prohibiting Bowman from contacting the victim.

We accordingly affirm.

AFFIRMED.