# IN THE COURT OF APPEALS OF IOWA

No. 1999-253 (9-483) / 98-1279
Filed September 15, 1999

**STATE OF IOWA,**
Plaintiff-Appellee,

vs.

**JAMES ZIMMER,**
Defendant-Appellant.

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Appeal from the Iowa District Court for Guthrie County, Gregory A. Hulse, Judge.

Defendant appeals the sentence entered upon his convictions on two counts of third-degree burglary in violation of Iowa Code sections 713.1 and 713.6A (1997).

**AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shellie L. Knipfer, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, and Mary L. Benton, County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

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**HUITINK, J.**

James Zimmer appeals from judgment and sentence entered following his conviction for two counts of third-degree burglary.

***I. Background Facts and Proceedings.***

At the sentencing hearing Zimmer informed the sentencing judge of an erroneous reference to other pending criminal charges in the presentence investigation report. After ascertaining there were no pending charges against Zimmer, the sentencing judge proceeded with sentencing. The court's stated reasons for imposing a sentence of incarceration were:

> Specifically, I've reviewed your age, your prior record, your employment circumstances, your family circumstances, the nature of the offense, and obviously I am the judge who heard the testimony at the time of trial. I've also considered the disposition to one of the other Defendants in this matter, and without going into the reasons which were, I believe, amply stated on the record at the time of that sentencing; that is, one of the co-Defendants, I felt that there was just cause to follow the recommendation of the presentence investigation reporter in that case, and I see substantial differences in your situation and his -- especially in light of your criminal history as well as your repeated trips to the premises to commit the crimes.
>
> I've considered all of these matters in light of what opportunity there would be for your rehabilitation outside of prison especially in light of the fact that you have been there before and have been involved in crimes since.
>
> I further considered what sentence is reasonable and necessary for the protection of the public from further offenses by you.

On appeal, Zimmer seeks a remand for resentencing before another judge. He argues the inherent prejudice resulting from the reference to additional criminal charges and the lesser sentences imposed on codefendants justify the relief requested.

***II. Standard of Review.***

Our review of the trial court's decision is for the correction of errors at law. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). We review the court's decision for abuse of discretion because the challenged sentence does not fall outside statutory limits. *Id.* An abuse of discretion is rarely found when the sentence imposed is within the statutory maximum unless (1) the district court fails to exercise its discretion or (2) the district court considers inappropriate matters when deciding what sentence to impose. *State v. Pappas*, 337 N.W.2d 490, 494 (Iowa 1983). We may reverse only if the court's discretion has been exercised "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Thomas,* 547 N.W.2d at 225.

***III. Merits.***

The minimal essential factors a sentencing court must consider include the nature of the offense, its attending circumstances, the defendant's age, character, propensity and chances for reform . *State v. Wright*, 340 N.W.2d 590, 592 (Iowa 1983) (citations omitted). We rely on the district court's stated reasons to determine if its sentencing discretion has been exercised. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996) (citations omitted).

After reviewing the record, we are unable to find any support for Zimmer's claims. The district court expressly disavowed consideration of any erroneous reference to other criminal charges against the defendant. The district court also distinguished Zimmer's circumstances from codefendants who received suspended

sentences. Additionally, the sentence imposed was within the range of permissible punishments for these offenses. We find no abuse of the district court's sentencing discretion. The judgment and sentence entered below are affirmed.

**AFFIRMED.**