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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-598 / 94-608

STATE OF IOWA,

Appellee,

vs.

CORWIN JAMES KRALIK,

Appellant.

Appeal from the Iowa District Court for Union County, Richard D. Morr, Judge.

Corwin Kralik appeals the sentence imposed on his conviction for third-degree fraudulent practices in violation of Iowa Code section 714.11 (1993).

AFFIRMED.

Alfredo Parrish of Parrish, Kruidenier, Moss, Dunn, Montgomery & Thomas, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, and Timothy R. Kenyon, County Attorney, for appellee.

Heard by Donielson, C.J., and Habhab and Cady, JJ.

DONIELSON, C.J.

Corwin Kralik, a former deputy with the Union County Sheriff's Department, was convicted of third-degree fraudulent practices. He was sentenced to a two-year suspended term and supervised probation. He contends the sentencing court abused its discretion in sentencing him to to a two-year suspended sentence and in not granting him a deferred judgment.

Kralik argues the district court failed to exercise its sentencing discretion because it took into consideration the fact he was a law enforcement officer. He contends this violated his right to due process and equal protection. We have reviewed the parties' arguments, the record and the applicable law, and conclude there was no abuse of discretion in the imposition of Kralik's sentence.

In rendering its sentence the district court carefully delineated and considered each of the factors set forth in Iowa Code section 907.5. In addressing the nature of the offense, the court stated--

> The court also considers the nature of the offense committed and the harm to the victim. In considering the nature of the offense committed, the court must somewhat focus on the fact that the defendant in this case was a law enforcement officer. Because of his involvement in this criminal conduct, he has created a negative perception of law enforcement in the eyes of the public, specifically the Union County Sheriff's Department. The court deems that to be a substantial public harm to law enforcement in general.

After it had considered all of the factors set forth in section 907.5, the court noted it had considered all other factors and information brought to its attention. In declining to defer judgment or sentence, the court found--

> [T]his would not be an appropriate case for a deferral of judgment or a deferral of sentence for the reason that this defendant is somewhat more sophisticated than the normal defendant that comes before the court. This defendant, when he committed the crime, was a law enforcement officer. Law enforcement officers have a special trust. The defendant, in addition to committing the crime, violated that trust.

I. STANDARD OF REVIEW AND PRESERVATION OF ERROR.

The State argues Kralik's notice of appeal was insufficient to properly preserve error. Our court has previously recognized there is no procedure which allows a defendant to address the court during or after the pronouncement of sentence, and there is no rule which expressly requires the claim of an improper sentence be submitted to the trial court prior to an appeal. State v. Thomas, 520 N.W.2d 311, 313 (Iowa App. 1994). We conclude Kralik adequately preserved error in this case by filing his timely notice of appeal.

II. SENTENCING DISCRETION.

The imposition of a sentence is generally within the discretion of the trial court and will be disturbed only upon a showing of abuse of discretion. State v. Thomas, 520 N.W.2d 311, 313 (Iowa App. 1994). An abuse of discretion will be found only when the discretion is

exercised on grounds which are clearly untenable or to an extent clearly unreasonable. Id. The use of an impermissible sentencing factor is viewed as an abuse of discretion and requires resentencing. Id.

Section 907.5 lists several factors a court shall consider in determining if a defendant should receive a deferred judgment. One of those factors is a "catch-all" provision requiring a court to consider "such other factors as are appropriate." Another jurisdiction with a similar "catch-all" provision has held a sentencing court could consider a defendant's status as a law enforcement officer. See State v. Elliget, 864 P.2d 1064, 1068 (Ariz. App. 1993) ("court may properly consider as aggravating the special injurious consequences to the community resulting from this crime being committed by a police officer").

We believe a defendant's status as a law enforcement officer is an appropriate consideration under section 907.5. Law enforcement officers are charged with a public trust, and the public has every right to expect officers to conduct themselves with good character, sobriety, judgment and discretion. See Sieg v. Civil Service Comm'n, 342 N.W.2d 824, 829 (Iowa 1983). With every trust goes a corresponding responsibility to guard and protect it. State v. Pappas, 337 N.W.2d 490, 495 (Iowa 1983). "Breaching a public oath and undermining public confidence in law enforcement can increase a crime's 'guilt or enormity.'" Elliget, 864 P.2d at 1068. Undermining public

confidence in law enforcement can increase a crime's injurious consequences. Id.

The State cites State v. Pappas, 337 N.W.2d 490 (Iowa 1983), and State v. Morrison, 323 N.W.2d 254 (Iowa 1982), in support of its argument that the defendant's professional status could be considered in his sentencing. Kralik argues Pappas and Morrison are distinguishable because they involved defendants who had used their official status to accomplish illegal objectives. He contends his filing of a fraudulent insurance claim was purely personal and did not involve his capacity as a law enforcement officer.

We are not persuaded by this argument. Nothing in Pappas and Morrison specifically limits consideration of a defendant's professional status to cases in which that status was used to accomplish an illegal objective. In fact, in Morrison our supreme court cited with approval a Nebraska decision in which it was held a trial court had not erred in taking into account the defendant's status as a police officer when he was sentenced for committing manslaughter. See Morrison, 323 N.W.2d at 256 (citing State v. Welsh, 275 N.W.2d 54, 56 (Neb. 1979)).

We find Kralik's arguments of equal protection and due process violations to be without merit. Equal protection requires the application of a law be reasonable and not arbitrary. See State v. Haines, 360 N.W.2d 791, 795 (Iowa 1985). The test of whether due process has been violated

is whether the challenged practice or rule offends some principle of justice so rooted in the traditions and conscience of our people to be ranked as fundamental. Id. at 796.

Consideration of Kralik's status as a law enforcement officer violates neither his due process nor equal protection rights. Kralik voluntarily assumed a position of public trust. His illegal conduct had negative consequences for his community and its perception of law enforcement personnel. Consideration of Kralik's professional status was neither unreasonable nor did it offend a fundamental principle of justice. We reject Kralik's equal protection and due process claims.

We also reject Kralik's argument that the sentencing court impermissibly relied on one ground in making its decision. The record makes it very clear the trial judge carefully considered numerous factors, both mitigating and aggravating in nature. This was not a case in which the sentencing court failed to exercise its discretion by adhering to a policy in which a single factor was solely determinative. See, e.g. State v. Dvorsky, 322 N.W.2d 62, 67 (Iowa 1982)(resentencing required where sentencing decision was based solely on the fact there had been a loss of life); State v. Hildebrand, 280 N.W.2d 393, 396 (Iowa 1979) (resentencing required where sentencing decision was based on judge's policy of not granting deferred sentence in OWI case where an accident was involved).

This case is more akin to State v. McKeever, 276 N.W.2d 385, 388 (Iowa 1979), wherein a review of the entire record revealed the sentencing court had considered numerous relevant factors in reaching its decision, even though its ruling referred to a singular "reason" as the basis for its refusal to defer or suspend a sentence. The record reflects the sentencing court took into account the minimal essential factors which must be considered in the sentencing process as well as additional factors brought to its attention. There was no abuse of discretion and the sentence imposed by the district court is affirmed.

AFFIRMED.