FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed February 26, 1985
vs.	)	4-561 84-885
LARRY J. O'CONNOR,	)	
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Black Hawk County, James L. Beeghly, Judge.

Defendant appeals from the sentence imposed on his conviction of false use of a financial instrument. AFFIRMED.

Wesley B. Huisinga, Waterloo, for defendant-appellant.

Thomas J. Miller, Attorney General, and Mickey W. Greene, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., Donielson, and Snell, JJ.

Defendant asserts there was prosecutorial misconduct during his sentencing, the trial court improperly held him to a higher standard because he is a lawyer, and the court abused its discretion in giving him a suspended five-year sentence for false use of a financial instrument. We affirm.

Defendant, Larry O'Connor, had received an insurance draft in the amount of $172.84, made payable to himself and a body shop. The check was for work performed by the body shop, and defendant signed his name to the check, printed the name of the body shop, and deposited the check in his own account. Apparently, there was a dispute between defendant and the shop over the quality of work performed. O'Connor had previously been a practicing attorney and his license to practice law was revoked. Defendant pleaded guilty to the charge and the presentence investigator suggested O'Connor be given a deferred sentence. The State recommended a suspended sentence, and the court went along with this suggestion, pronouncing a five-year suspended sentence.

The first instance of claimed prosecutorial misconduct defendant refers to is an alleged agreement by the State to go along with the recommendation of the presentence investigator. However, the record shows that during the hearing prior to sentencing, the State pointed out the agreement was to accept the recommendation, with the understanding that the State would never agree to recommend a deferred sentence. Defendant's attorney agreed at the time that was his understanding of the bargain.

Several other comments of the prosecutor are objected to by the defendant, who claims the prosecutor in his remarks hinted that conduct other than the license revocation warranted the sentence not be deferred. We cannot find support for this proposition in reviewing the prosecutor's statements. The prosecutor stated, "We think given the entire course of Mr. O'Connor's life with the law and after his license was revoked, the entire state of this affair would say that he is receiving a break by getting a suspended sentence."

The Court based its sentence on all the facts before it, including the complete record provided by the presentence investigator. We find no evidence to support defendant's contention the statements of the prosecutor were improper.

Defendant's second claim of error is that he was held to a higher standard than allowed when the court imposed sentencing. This occurred, he claims, when the court said, "If this had been your sole instance of getting off the beaten track, I have no doubt in my mind I would have ordered a deferred sentence, but this wasn't the one and only instance, and that was also a consideration of the Court." However, the record shows the court also stated, "I don't believe that I have held you to a higher standard by the fact you are an attorney than I would considering those same factors within (sic) any other person."

The court is required to consider "all pertinent information" in making its sentencing determination, including any presentence report made. Iowa Code § 901.5 (1983). The investigator is further required to consider a number of relevant factors, including defendant's characteristics, and "Defendant's criminal record and social history." Iowa Code § 901.3 (1983).

Further, the supreme court has stated that defendant's status as a lawyer may be considered during sentencing. State v. Pappas, 337 N.W.2d 490, 495 (Iowa 1983); State v. Morrison, 323 N.W. 2d 254, 256 (Iowa 1982). It is evident from the pertinent statutes and case law no error was committed by the trial court.

In his final argument, defendant claims the court abused its discretion in imposing the sentence. He also says when the evidence is barely sufficient to support a verdict, a low degree of punishment should be inflicted, citing State v. Madden, 35 Iowa 511 (1872).

We will find an abuse of discretion in sentencing only if defendant shows "such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable." State v. Morrison at 256. An abuse of discretion does not occur simply because the court rejects the recommendation of the presentence investigator. State v. Beyer, 258 N.W.2d 353, 359 (Iowa 1977).

The court indicated it considered defendant's past problems with financial misconduct as showing he needed more rehabilitation than would be provided by a deferred sentence. We find no abuse of discretion in the court's reasoning. Further, there was ample evidence defendant commited the crime, although he had given a number of reasons for taking the action he did.

We find the defendant's arguments without merit and affirm the trial court.

AFFIRMED.