IN THE COURT OF APPEALS OF IOWA

No. 0-120 / 99-1221
Filed April 28, 2000

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SHERRY FAYE MOSLEY,
Defendant-Appellant.

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

The defendant appeals from the judgment and sentence entered upon her guilty plea to third-degree theft. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Denise Timmins, Assistant Attorney General, and Ron Robertson, County Attorney, for appellee.

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

VAITHESWARAN, J.

The state charged thirty-five year old Sherry Faye Mosley with third degree theft after she took beef from a Fort Dodge grocery store on March 27, 1999. The charge was enhanced in light of theft convictions in 1995 and 1997. Mosley pled guilty to the aggravated misdemeanor. Following the plea hearing, the district court ordered Mosley to submit to inpatient drug treatment pending sentencing. Mosley began the program but, after three weeks, left on a weekend pass and never returned. She also failed to submit to a scheduled drug test and did not return counselors' phone calls.

The district court sentenced Mosley to an indeterminate prison term of up to two years, imposed a fine of $500 and a 30% surcharge, and ordered her to pay restitution and attorney fees. On appeal, Mosley contends the district court should not have sentenced her to prison.

When a challenged sentence falls within statutory limits, our review is for an abuse of discretion. *State v. Cooley*, 587 N.W.2d 752, 754 (Iowa 1998). A district court should weigh all pertinent matters, including "the nature of the offense, the attending circumstances, defendant's age, character and propensities and chances of . . . reform." *Id.* at 754-55 (quoting *State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979)).

Mosley specifically contends the district court failed to give due consideration to her status as a mother of four children and to her efforts to overcome drug addiction. We disagree. At the sentencing hearing, the district court noted Mosley had twelve theft convictions in the previous twelve years and had received every available sentencing option. The court also noted Mosley

had abandoned her treatment program, rendering suspect her assertion she was drug-free. The court stated, "you don't care enough for your family to stay away from stealing. And if that's the attitude, then I don't feel sorry for you that you may not be able to care for your children." The court told her, given the number of prior offenses, "you richly deserve to be in a prison where you won't be stealing from somebody whether it's for a few months or for a long time." We conclude the district court adequately considered Mosley's parental status and her claimed sobriety and did not abuse its discretion in requiring Mosley to serve time in prison.

AFFIRMED.

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