

IN THE COURT OF APPEALS OF IOWA

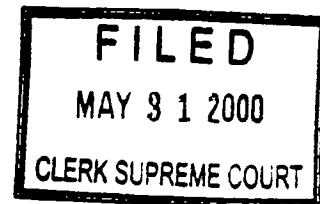
No. 0-2005 / 98-776

Filed May 31, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ALAN WAYNE CAVE,
Defendant-Appellant.



Appeal from the Iowa District Court for Cedar County, J. Hobart Darbyshire, Judge.

Defendant challenges the district court's exercise of its discretion in sentencing. **AFFIRMED.**

L. Jeffrey Zearley, Tipton, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, and Lee W. Beine, County Attorney, for appellee.

Considered by Streit, P.J., and Zimmer and Hecht, JJ.

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ZIMMER, J.

On appeal, Alan Wayne Cave challenges the district court's exercise of its discretion in sentencing. We affirm.

On February 27, 1998, Cave pleaded guilty to forgery as an habitual offender, in violation of Iowa Code section 715A.2(1) and (2)(a) (1997). On April 24, 1998, the district court sentenced him to a term of incarceration not to exceed fifteen years. Cave appeals his sentence, claiming the district court abused its discretion by ordering incarceration instead of probation.¹

I. Scope of Review. 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. *State v. Jorgensen*, 588 N.W.2d 686, 687 (Iowa 1998). The trial court's sentencing decisions "are cloaked with a strong presumption in their favor." *State v. Sailer*, 587 N.W.2d 756, 759 (Iowa 1998).

II. Discretion in Sentencing. The district court did not abuse its discretion in selecting incarceration over probation. Defendant forged a check for

¹ The State asserts Cave's argument should not be addressed on appeal because he failed to cite where in the record error was preserved and failed to cite authority. Cave's four-sentence brief does lack these particulars. However, our normal error-preservation standard does not apply in this context:

Generally, issues not raised in the trial court may not be raised for the first time on appeal. [] This rule gives the trial court the opportunity to correct the alleged error and adds symmetry to the appellate process. [] The rule, however, is not ordinarily applicable to void, illegal or procedurally defective sentences. [] It is incongruous to the sentencing process. A sentence is pronounced and the reasons for the sentence are expressed only after the defendant and counsel have had an opportunity to address the trial judge. [] There is no procedure which allows the 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 or illegal sentence to be submitted to the trial court prior to an appeal. [] We reject the State's notion that defendant was required to object during the sentencing.

State v. Thomas, 520 N.W.2d 311, 313 (Iowa App. 1994) (citations omitted); see also *State v. Cooley*, 587 N.W.2d 752, 754 (Iowa 1998).

over \$20,000. He has a twenty-year history of such property crimes, hence his status as an habitual offender. He spent time in prison for similar offenses. Cave presented evidence of his mental illness (bipolar disorder) and his recent commencement of treatment. The court considered the illness in sentencing but noted the particular drug Cave was taking had been available for several years and Cave did not seek the treatment earlier. The presentence investigation prepared by the department of corrections recommended Cave be incarcerated. The court's decision to incarcerate was well within its discretion. We affirm.

AFFIRMED.