

IN THE COURT OF APPEALS OF IOWA

FILED

NOV 20 1984

CLERK SUPREME COURT

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed November 20, 1984 307

vs.

)

4-443
84-459

RANDY LAVERNE RUTTER,

)

Defendant-Appellant.

)

Appeal from the Iowa District Court for Wright County, Newt Draheim,
Judge.

Defendant appeals from the sentence imposed on his conviction of false use
of a financial instrument as defined in Iowa Code section 715.6 and the finding
that he was a habitual offender. VACATED AND REMANDED.

Fern S. Shupeck, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Lona Hansen, Assistant Attorney
General, for plaintiff-appellee

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

OXBERGER, C.J.

The defendant pleaded guilty on December 12, 1983, to charges of false use of a financial instrument and being a habitual offender, and was sentenced for a term not to exceed fifteen years as provided by Iowa Code § 902.8 (1983). Defendant Randy Ruiter has appealed his sentence, arguing that it was improper for the sentencing court not to consider the imposition of a suspended sentence and probation.

Suspended sentences and probation are options available in sentencing all crimes except forcible felonies. Iowa Code § 702.11 (1983). Ruiter says since neither crime he pleaded guilty to involves a forcible felony, error occurred in sentencing when his defense counsel and the court incorrectly believed confinement was mandatory under Iowa Code § 902.8 (1983). The State believes the court correctly interpreted the code.

The Iowa Supreme Court has stated in a recent case that a habitual offender is eligible for a suspended sentence and probation. State v. Washington, No. 83-874 slip op. at 10-11 (1984). Therefore, the court erroneously did not consider these options in sentencing Ruiter.

The State argues in the alternative that even if the options were available, it made no difference that the court did not take this into consideration because of its statement that incarceration was mandatory not only under the code but because "Defendant needs structured environment and for protection of society from further offenses."

We will not speculate what weight the court gave to the various factors it considered in sentencing the defendant. State v. Messer, 306 N.W.2d 726, 731 (Iowa 1981). We vacate the trial court's sentence and remand for resentencing.

REVERSED AND REMANDED.