IN THE COURT OF APPEALS OF IOWA

No. 0-829 / 00-723
Filed January 24, 2001

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

THOMAS WILLIAM HOLZER
Defendant-Appellant.

Appeal from the Iowa District Court for Shelby County, Keith E. Burgett, Judge.

Thomas Holzer appeals his sentence imposed following his guilty plea to possession of five grams or less of methamphetamine with intent to deliver in violation of Iowa Code section 124.401(1)(c)(6) (1999). **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Darrel L. Mullins, Assistant Attorney General, and Jeffrey L. Larson, County Attorney, for appellee.

Heard by Streit, P.J., and Hecht and Vaitheswaran, JJ.

VAITHESWARAN, J.

Thomas Holzer pled guilty to possession of a controlled substance (methamphetamine) with intent to deliver. The district court sentenced him to a prison term not exceeding ten years. On appeal, Holzer contends the court's sentencing was flawed. We review a sentence for an abuse of discretion or a defect in sentencing procedure. *See State v. Jorgensen*, 588 N.W.2d 686, 687 (Iowa 1998). Finding neither, we affirm.

I. Incomplete Presentence Investigation Report

Shortly before sentencing, Holzer began attending outpatient counseling sessions to address his drug addiction. The presentence investigation report noted this fact but did not contain the counselor's conclusions or recommendations. Holzer maintains the district court should not have sentenced him without this written information. We reject this contention. Although the presentence investigation report did not include the counselor's recommendations, the counselor testified at the sentencing hearing. The district court stated it listened to his testimony "in detail." Because the omitted information entered the record in the form of live testimony and was considered by the court, we reject this ground for vacating the sentence. *See State v. Phillips*, 561 N.W.2d 355, 358-9 (Iowa 1997) (holding absence of formal information in presentence investigation report did not render sentencing procedure deficient where court had benefit of substantially equivalent information); *cf. State v. Swartz*, 601 N.W.2d 348, 354 (Iowa 1999) (concluding errors in presentence investigation report afforded defendant no basis for relief

from sentencing where defense counsel corrected errors on record and sentencing court made no reference to inaccurate information).

II. Failure to Consider Deferred Judgment or Probation

Holzer next contends the district court should have sentenced him to a deferred judgment rather than a prison term. In deciding whether to enter a deferred judgment, a district court is required to balance the goal of a defendant's rehabilitation against the goal of community protection. Iowa Code § 907.5 (1999); *accord* Iowa Code § 901.5. The court did so here. The court stated in pertinent part:

> The criminal justice system is two-pronged. It has to do not only with substantial rights for you as a defendant. It also has to do with the consideration of the general public. That's difficult for some of you to understand. And I'm satisfied that [the counselor's] focus of his attention on you is solely devoted to the social aspects of this offense and the opportunity to treat you and hopefully succeed by reaching a recovery level where you are a clean, sober, productive citizen and not likely to re-offend. That's it in a nutshell so far as he's concerned and I'm satisfied that he has started on that path for you. And perhaps done it very successfully.
>
> But the other aspect of this is that it's a two-pronged issue. There's a great deal of difference between the criminal justice system and drug addiction therapy. In your case I have examined all of these papers. I have looked at the presentence report and everybody has had a chance to look at them. I've read the letters from various people and your case is not a case which is a routine run-of-the-mill kind of a case of a person who is simply drug addicted. There are elements here in all of these documents that I can glean that you're a person that needs to go to the penitentiary and that's where I'm going to send you.
>
> The reason I am is because I've tried to distinguish between the aspects of the social nature of your recovery as well as evaluate what I believe to be the commission of a criminal offense which is enormously serious. Not to say that I have any reluctance to hope and pray that you will follow a path of rehabilitation once you get out of prison.... And it isn't any pleasure of mine to see a young man at your age go to prison but I do know that if you're —if your focus of your addiction is directed in the same channels that it--that it has been here for the last few months, there's a light at the end of the tunnel for you and I certainly hope that that is the case....

> [I]t's my opinion here based on what I have seen that if I have an opportunity to aid in your rehabilitation, it's to see that you know how badly you want to stay out of prison. That's the reason....

We conclude the court adequately balanced the twin goals set forth in our sentencing statutes before concluding Holzer should serve a prison term. The court was not required to give its reasons for rejecting the deferred judgment option. *State v. Russian*, 441 N.W.2d 374, 375 (Iowa 1989). Accordingly, we reject this sentencing challenge.

III. Failure to Consider All Essential Sentencing Factors

Holzer next contends the district court did not consider all required sentencing factors. A district court is required to weigh all pertinent matters, including "the nature of the offense, the attending circumstances, defendant's age, character and propensities and chances [for] reform." *State v. Cooley*, 587 N.W.2d 752, 754-55 (Iowa 1998) (quoting *State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979)). A court need not, however, expressly acknowledge every sentencing circumstance. *State v. Boltz*, 542 N.W.2d 9, 11 (Iowa App. 1995). Even a "succinct and terse" statement of reasons may be sufficient as long as the statement permits review of the district court's sentencing discretion. *Id.* We conclude the district court's sentencing decision satisfied this standard.

IV. Reliance on Unprosecuted Charges

Holzer finally contends the district court impermissibly relied on unprosecuted or unproven charges. We have stated a sentencing court may consider unprosecuted charges only if admitted by the defendant or adequate facts presented at the sentencing hearing show the defendant committed the crimes. *State v. Delaney*, 526 N.W.2d 170, 178 (Iowa App. 1994).

The court here noted Holzer had paraphernalia not ordinarily used by simple drug users. This fact relates to the charge to which Holzer pled guilty. Therefore, the court's reference to this fact was not a reference to an unprosecuted charge and we reject this challenge to the sentencing decision.

We affirm Holzer's judgment and sentence.

AFFIRMED.