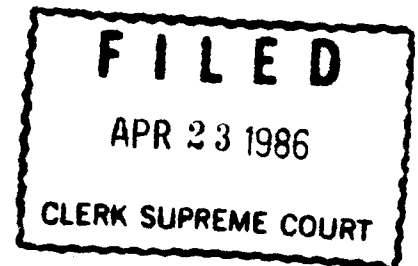


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,)
Plaintiff-Appellee,)
vs.)
RONALD R. CURRY,)
Defendant-Appellant.)

Filed April 23, 1986

6-45
85-1181

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Appeal from the Iowa District Court for Scott County (No. 119427) - Max
R. Werling, Judge.

Defendant appeals from the sentence imposed following his conviction
of second-degree burglary as defined in Iowa Code sections 713.1 and 713.5 (1985).

AFFIRMED AS MODIFIED.

Charles Harrington, Chief Appellate Defendant, and Raymond E. Rogers,
Assistant Appellate Defendant, Des Moines, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General, and Roxann M. Ryan, Assistant Attorney
General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Schlegel and Hayden, JJ.

OXBERGER, C.J.

Defendant Donald R. Curry was convicted of Burglary in the Second Degree under Iowa Code section 713.5 (1985). On appeal, Curry argues that the trial court erred in sentencing him to a determinate sentence of ten years rather than an indeterminate sentence not to exceed ten years. Curry, therefore, requests that his sentence be vacated and his case remanded for resentencing.

Burglary in the Second Degree is classified as a class "C" felony punishable by imprisonment not to exceed ten years. Iowa Code §§ 713.1, 713.5, 902.9(3) (1985).

In this case, the trial court obviously intended to impose the maximum ten-year sentence. However, rather than stating that Curry's sentence was "not to exceed ten years," the trial court stated that Curry was committed "for a term of ten years."

In these circumstances, we conclude that it is proper to exercise our Iowa Code section 814.20 authority to modify the district court judgment so that it will comply with section 902.9(3). See State v. White, 337 N.W.2d 517, 521 (Iowa 1983) (modification of a determinate sentence of ten years to an indeterminate period). Defendant's sentence is modified to provide that he shall serve a term not to exceed ten years. As modified, we affirm the district court judgment.

AFFIRMED AS MODIFIED.