

IN THE COURT OF APPEALS OF IOWA

FILED

MAY 22 1984

CLERK SUPREME COURT

STATE OF IOWA,

)

Filed May 22, 1984

Plaintiff-Appellee,

)

vs.

)

BRUCE DAVID VAUGHN,

)

4-94

Defendant-Appellant.

)

83-631

---

Appeal from the Iowa District Court for Black Hawk County—Dennis D. Damsgaard, Judge.

Defendant appeals from the sentence of imprisonment imposed on his guilty plea conviction of assault with intent to inflict serious injury, as defined in Iowa Code section 708.2(1). AFFIRMED.

Charles L. Harrington, Chief Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Sherie Barnett, Assistant Attorney General, for plaintiff-appellee.

Considered by Donielson, P.J., and Snell and Sackett, JJ.

Defendant, Bruce Vaughn, appeals from the sentence of imprisonment imposed upon his guilty plea conviction of assault with intent to inflict serious injury, as defined in Iowa Code section 708.2(1). He asserts that the sentencing court improperly considered the fact that he had originally been charged with the higher crime of willful injury, as defined in Iowa Code section 708.4.

Vaughn was charged with willful injury after doctors who examined his infant son reported that they suspected child abuse. Following plea negotiations, Vaughn entered a plea of guilty to the lesser crime of assault with intent to inflict serious injury. At the plea proceeding, Vaughn refused to acknowledge his guilt. He indicated, however, that he was satisfied with the plea agreement because it reduced his exposure to incarceration from ten to two years. Vaughn maintained that he had not assaulted the infant; he claimed the baby had been injured when he rolled off a bed. Vaughn did admit that he had slapped the baby once, allegedly in an attempt to bring the infant out of a seizure. The presentence investigation report indicated that the infant had sustained multiple fractures to the skull, jaw and ribs, and bone chips in both knees.

The district court sentenced Vaughn to a prison term of two years. The court indicated that it had considered the nature of the crime, including the injuries to the infant, as well as the possibility that a prison sentence might deter Vaughn and others from committing such crimes. The court also indicated that it believed Vaughn had received a "big break" in being allowed to plead guilty to the lesser crime. The court then commented on the duty of a father to protect his child. Finally, the court noted that defendant had entered an Alford plea and then stated: "All of the evidence, however, was against you and the Court took that into consideration when I accepted your plea. I think you have a real problem in dealing with yourself on this very issue."

I.

215

On an appeal from a sentence which is within the statutory maximum, we will not interfere with the sentence imposed unless an abuse of discretion is shown. State v. Gibb, 303 N.W.2d 673, 687 (Iowa 1981). Ordinarily, an abuse of discretion will be found only where there is no support for the decision in the record. Id. A trial court has the discretion to select a sentence that "will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others." Iowa Code § 901.5 (1983). A trial court may not, however, impose a severe sentence on a lower crime on the ground the accused actually committed a higher crime or on the ground that there are other unprosecuted offenses, unless the facts before the court show the accused committed the crime or the defendant admits it. State v. Black, 324 N.W.2d 313, 315 (Iowa 1982); State v. Messer, 306 N.W.2d 731, 732 (Iowa 1981). In the absence of evidence to the contrary, this court assumes that the trial court made the proper use of the presentence report and did not give consideration to anything based on speculation or conjecture. State v. Waterman, 217 N.W.2d 621, 623 (Iowa 1974).

II.

Assuming, without deciding, that the sentencing court considered the fact that Vaughn had originally been charged with the higher crime of willful injury, we find no abuse of sentencing discretion. While Vaughn did not admit to the higher crime by pleading guilty to assault with intent, the facts before the court showed that Vaughn actually committed the higher crime of willful injury.

The record establishes that the victim was seriously injured. Because of the seriousness of the infants' injuries, which included skull fractures, he had to be transported by Med-A-Vac from Waterloo to Iowa City for treatment. The fact of serious injury, coupled with the elements of assault with intent to commit serious injury, constitute the crime of willful injury. See Iowa Code §§ 708.1-2, .4 (1981).

By pleading guilty to assault with intent, Vaughn admitted each and every element of that offense. State v. Parham, 220 N.W.2d 623, 627 (Iowa 1974).

Because the sentencing court had evidence before it which tended to show that Vaughn actually committed the higher crime of willful injury, the court was free to impose a more severe sentence on the lower crime, assault with intent. We find no abuse of discretion.

**AFFIRMED.**