

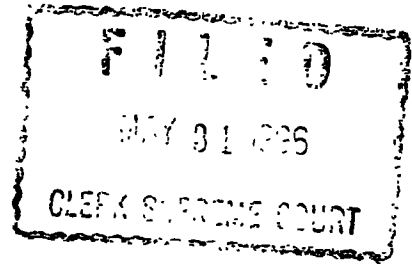
IN THE COURT OF APPEALS OF IOWA

No. 6-252 / 95-1035

STATE OF IOWA,
Plaintiff-Appellee.

vs.

BRETT JEFFRIES BUTLER,
Defendant-Appellant.



Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan, Judge.

Brett Jeffries Butler appeals the sentence entered upon his convictions of possession with intent to deliver (cocaine) and failure to affix a drug tax stamp.

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and Andi S. Lipman, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Shawn Wehde, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Cady and Huitink, JJ. Vogel, J., takes no part.

PER CURIAM.

This is an appeal by a defendant claiming the district court abused its discretion by imposing the statutory mandatory minimum sentence on his convictions. We affirm by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Defendant Brett Butler pled guilty to possession of a controlled substance (cocaine) with intent to deliver, in violation of Iowa Code section 124.401(1)(c) (1993), and failure to affix a drug tax stamp, in violation of section 453B.12.

The presentence investigation recommended he be sentenced to a term of imprisonment because he admitted to being a drug dealer in Waterloo for twelve years, and the State adopted this recommendation. Butler asked for probation. Defense counsel brought to the court's attention new legislation which was to go in effect July 1, 1995, which he stated would give the parole board the ability to waive the mandatory minimum sentence.

The district court sentenced Butler to terms of imprisonment on the two charges. The court made the terms concurrent and ordered that the mandatory minimum would apply. The court stated:

In summary, I guess I'm imposing this because of the presentence investigation, your criminal record, and the fact that you admitted in that presentence investigation that you had been involved in this for twelve years. I feel that the sentence is justified, but I also feel that your honesty and the way you're confronting this is the best thing you can possibly do, and the parole board may decide not to impose that mandatory minimum after July 1st.

After the court imposed this sentence, the governor vetoed the legislation in question. Butler now appeals, claiming the court abused its discretion in imposing the mandatory minimum sentence under section 124.413. He believes the court only imposed the mandatory minimum sentence because it believed the parole board would have the ability to waive this part of the sentence. Butler contends the court should have waived the mandatory minimum sentence itself rather than relying upon the parole board to do so.

A sentence will be disturbed by a reviewing court only upon a showing the trial court abused its discretion. *State v. Dicks*, 473 N.W.2d 210, 215 (Iowa App. 1991). Defendant has the burden of showing an abuse of discretion. *State v. LeGrand*, 501 N.W.2d 59, 64 (Iowa App. 1993).

We find no abuse of discretion in the present case. Due to Butler's criminal record and the fact he admitted being a drug dealer for twelve years, the court properly imposed the mandatory minimum sentence in this case. The court's reference to the legislation in question merely recognized that the parole board might waive the mandatory minimum, but does not mean that the court was allowing the parole board to make this decision instead of the court.

We affirm defendant's convictions and sentence. Costs of this appeal are assessed to defendant.

AFFIRMED.