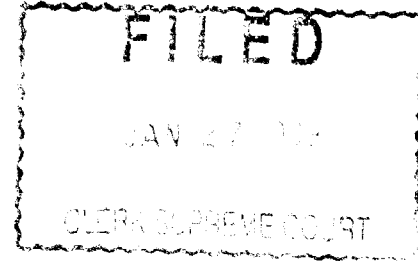


IN THE COURT OF APPEALS OF IOWA

No. 8-658 / 98-381
Filed January 27, 1999



STATE OF IOWA,

Appellee,

vs.

LARRY E. WARD,

Appellant.

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,
Judge.

Larry Ward appeals his sentences for two counts of OWI, second offense, and
one count of OWI, third offense. **AFFIRMED.**

Kent A. Simmons, Davenport, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney
General, William E. Davis, County Attorney, and Marc Gellerman, Assistant County
Attorney, for appellee.

Considered by Sackett, C.J., Huitink, Streit, Vogel, and Mahan, JJ. Zimmer,
J., takes no part.

HUITINK, J.

Larry Ward appeals his sentences entered on convictions for two counts of operating while intoxicated (OWI), second offense, and one count of OWI, third offense, in violation of Iowa Code sections 321J.2(1) and (2)(b). We affirm on appeal.

Ward had previous OWI convictions in 1987, 1988, and 1994. He was arrested for OWI on August 7, 1997, and charged with OWI, second offense. He was arrested for OWI again on September 26, 1997, and charged with OWI, second offense. Ward was arrested for a third time on November 9, 1997, and charged with OWI, third offense. He entered guilty pleas to the charges against him.

At the sentencing hearing, the State recommended the maximum sentences permitted by law due to Ward's reckless disregard for the drinking and driving laws of Iowa. The presentence investigation (PSI) recommended placement in an OWI facility. Ward asked the court to follow the PSI recommendation. The district court sentenced Ward to a term of imprisonment not to exceed two years on each charge of OWI, second offense, and a term of imprisonment not to exceed five years on the charge of OWI, third offense. These sentences are to be served consecutively.

Ward appealed. He claims the district court abused its discretion by not following the PSI recommendation for placement in an OWI facility.

A sentence imposed by the district court will be overturned only for an abuse of discretion. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). An abuse of

discretion will not be found unless defendant shows such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995).

The district court stated it would not send Ward to the OWI facility because he had attended a similar program which had been offered in 1988 or 1989 while Ward was in a residential corrections facility. Ward asserts the district court's assumption on this matter was an abuse of discretion. He states there was no evidence to show the two programs were similar. Furthermore, he claims, even if the programs were the same, he took the other program so long ago it should not preclude him from taking it again. Ward contends the court should have followed the PSI recommendation.

We determine Ward has not shown the district court abused its discretion by sentencing him to prison instead of in an OWI facility. The court stated:

Clearly the defendant presents a significant threat not only to himself but to the community at large from his continuing drinking and driving behavior, and the rapidity in which these offenses occurred gives the Court significant concern about the defendant's ability not only to control his alcoholism but to control his driving while under the influence.

Based upon the defendant's previous criminal history and the nature and circumstances of each of these offenses, and the significant threat which the Court views the defendant is posing to the community, the Court believes that incarceration is appropriate, and the maximum incarceration possible is that which is most likely to deter the defendant from continuing criminal activity, and provide safety to the community from the defendant's continuing criminal activity.

Whether or not Ward previously received the treatment which is available at the OWI facility, the district court gave adequate reasons to send him to prison for his crimes.

The court's reasoning was clearly not unreasonable.

.We affirm Ward's convictions and sentences for two counts of OWI, second offense, and one count of OWI, third offense.

AFFIRMED.