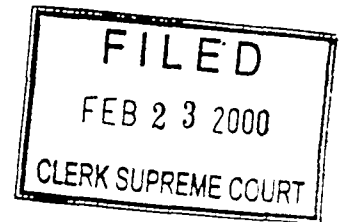


IN THE COURT OF APPEALS OF IOWA

No. 1999-392 (9-645) / 98-2240
Filed February 23, 2000



STATE OF IOWA,
Plaintiff-Appellee,

vs.

MARILYN LOUISE PHIPPS,
Defendant-Appellant.

Appeal from the Iowa District Court for Poweshiek County, James Q. Blomgren, Judge.

Defendant appeals from her judgment and sentence for possession of methamphetamine with intent to deliver. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, and Michael W. Mahaffey, County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Hecht, JJ.

HECHT, J.

Marion Louise Phipps ("Phipps") appeals from her judgment and sentence for possession of methamphetamine with intent to deliver. We affirm.

I. Factual Background and Proceedings. On April 13, 1998, Phipps was charged with two counts of possession of methamphetamine with intent to deliver. She pled guilty to one count of possession of methamphetamine with intent to deliver in violation of Iowa Code section 124.401(1)(c)(6) (1997). As part of her plea agreement, the State agreed to be bound by the sentencing recommendation of a prospective presentence investigation (PSI). The PSI evaluator subsequently noted it would be difficult to recommend probation because Phipps had previously been on probation when she was arrested for the current charge. However, the PSI made no sentencing recommendation and concluded the sentence should be left to the discretion of the district court.

Sentencing was held on December 21, 1998. At the sentencing hearing, the following colloquy occurred:

COURT: Mr. Mahaffey, do you have anything to say with regard to sentence and punishment?

MR. MAHAFFEY [STATE]: Your honor, this was a plea agreement. Ms. Phipps was faced with many more years than 10 years at the time that the plea of guilty was entered into. And the agreement was that she would plead to the Class C felony and that we would – that I would go along with the presentence recommendation. The presentence recommendation does not make a specific sentencing recommendation to the Court as the Court is aware, but if you look at the agent's comments and recommendation, the last sentence of the first paragraph of the same says it's difficult to recommend probation of someone who has committed the same offense they were on probation, I think, prior to the current charge and the sentencing is left to the discretion of the Court. It's the State's contention that she should be sent for the 10 years. I think the record is clear that Ms.

Phipps has been involved in drug activity for a period of time, and we would respectfully request that the Court incarcerate her.

Phipps's counsel did not object to the prosecutor's statement. The district court subsequently imposed a sentence of ten years in prison and a \$1000 fine.

Phipps appeals arguing the State breached the plea agreement by making a recommendation for a term of imprisonment, and the district court erred by proceeding with the sentencing after the State's breach.

II. Preservation of Error. The State contends Phipps has not preserved this issue for our review. We agree. Matters not raised in the trial court will not be considered for the first time on appeal. *State v. Dann*, 591 N.W.2d 635, 637 (Iowa 1999). Phipps's counsel failed to object to the prosecutor's comments at the sentencing hearing, and error was not preserved. *State v. Homess*, 600 N.W.2d 294, 297 (Iowa 1999); *State v. Ceaser*, 585 N.W.2d 192, 195 (Iowa 1998).

AFFIRMED.