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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 5-060 / 94-1027

STATE OF IOWA,

Appellee,

vs.

MONTE CLARE OWEN,

Appellant.

Appeal from the Iowa District Court for Johnson County, John R. Sladek, District Associate Judge.

Monte Owen appeals from the sentence imposed following his guilty plea for operating while intoxicated. **AFFIRMED.**

Bruce D. Nestor, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, J. Patrick White, County Attorney, and Linda Paulson, Assistant County Attorney, for appellee.

Considered by Hayden, P.J., and Cady and Huitink, JJ.

HUITINK, J.

Monte Owen appeals from the sentence imposed following his guilty plea for operating while intoxicated, first offense, in violation of Iowa Code section 321J.2 (1993). We affirm.

Owen filed a written guilty plea. The written plea indicated the State agreed to recommend five days in jail, a $500 fine plus surcharge and treatment. Owen requested a deferred judgment and waived presence at sentencing only if his request was granted.

The district court ordered an in-person sentencing. An unreported sentencing hearing took place at which time Owen was sentenced to ninety days incarceration with all but eighty-three days suspended. Owen was placed on probation for two years and fined $500.

Owen appeals. He contends the court had several sentencing options available to it, including deferred judgment. He argues that, due to the lack of a record of the sentencing hearing, there is no statement of reasons for the sentence imposed and no way of reviewing the sentence for abuse of discretion. We disagree.

Iowa Rule of Criminal Procedure 22(3)(d) provides that a sentencing court must provide its reasons for selecting a particular sentence. A sentence will be disturbed by a reviewing court only upon a showing that the trial court abused its discretion. State v. Garrow, 480 N.W.2d 256, 259 (Iowa 1992). No abuse of discretion will be found

unless the defendant shows that such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. State v. Neary, 470 N.W.2d 27, 29 (Iowa 1991). As long as the sentence is within the statutory maximum, it will not be reversed absent an abuse of discretion. State v. Floyd, 466 N.W.2d 919, 924 (Iowa App. 1990) (citations omitted).

The record before us reveals this was a paper procedure. Owen first filed a written plea of not guilty on February 25, 1994. He later withdrew his not guilty plea and filed a written guilty plea on April 13. This document contained both a written waiver of Owen's presence at sentencing and a written request for deferred judgment. The court accepted the change of plea by means of a written order filed April 13. Both Owen and the State submitted written sentencing recommendations in late April. On June 9 the court entered its written judgment and sentencing order. None of these proceedings were transcribed, and the record shows Owen's attorney spent only one-half hour in court during the entire process, presumably during the in-person sentencing hearing.

Owen claims there is no way to determine, from the record before us, whether the court's actions constituted an abuse of discretion. However, a defendant claiming error has an obligation to provide the court with a record that discloses the error claimed. State v. Ruiz, 496 N.W.2d 789, 791 (Iowa App. 1992) (citations omitted). The

"record" for purposes of criminal appeals consists of "[t]he original papers and exhibits filed in the trial court, the transcript of proceedings, if any, and a certified copy of the docket and court calendar entries . . . ." Iowa R. App. P. 10(a) (emphasis added). Where there is no reported record, the defendant should use the office of a bill of exceptions so as to make the proceedings and evidence appear of record. See Iowa R. Crim. P. 23.1(1).

Iowa R. Crim. P. 23.1(3) provides in part:

> Exceptions may also be taken to any action or decision of the court which affects any other material or substantial right of either party, whether before or after the trial of the indictment, or on the trial.

Sentencing affects the substantial rights of a defendant; therefore the bill of exceptions was available to Owen at the sentencing hearing. If Owen felt the court gave insufficient reasons for imposing the chosen sentence or that the record was incomplete in any form, he should have filed a bill of exceptions. He failed to do so.

An examination of the written sentencing order reveals the court imposed the given sentence because it felt "probation will provide the maximum benefit for rehabilitation of the defendant and should act as a deterrent to any future offenses." Although the foregoing statement is "terse and succinct," we do not believe its brevity prevents our review of the district court's exercise of sentencing discretion. See State v. Johnson,

445 N.W.2d 337, 343 (Iowa 1989) (citation omitted). This case is distinguishable from State v. Cooper, 403 N.W.2d 800 (Iowa App. 1987). In Cooper the sentencing order stated only "[t]he Court has reviewed the circumstances of the offense, and the defendant's prior background [sic] . . . ." Id. at 802. In the present case the statement by the court compared the benefits of probation to the benefits of incarceration. The court's statement, although brief, shows it complied with Iowa Code section 901.5 (1993) and was sufficient to satisfy the requirements of rule 22(3)(d). See Garrow, 480 N.W.2d at 259-60.

Based on the record before us, we find the district court did not abuse its discretion in sentencing Owen. Accordingly, the district court is affirmed.

AFFIRMED.