FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed September 30, 1987
vs.	)	252
JULIUS HAYEK,	)	7-311
Defendant-Appellant.	)	87-120

Appeal from the Iowa District Court for Howard County (2212), George L. Stigler, Judge.

Defendant appeals the district court's sentence following his plea of guilty to involuntary manslaughter. **AFFIRMED.**

John R. Sandre of Scalise, Scism, Sandre & Uhl, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Lona Hansen, Assistant Attorney General, for plaintiff-appellee.

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

SCHLEGEL, J.

Defendant appeals the district court's sentence following his plea of guilty to involuntary manslaughter. The plea was the result of an agreement by the State and defendant, in which the charge of operating a motor vehicle while intoxicated was dropped in exchange for defendant's guilty plea to involuntary manslaughter. The agreement provided that at the time of sentencing, the State would join in defendant's counsel's recommendation that any sentence imposed be suspended and that defendant be placed on probation, during which time he would reside in a halfway house until maximum benefits were received. The district court, however, sentenced defendant to a term of imprisonment not to exceed five years and a fine of $5,000 plus a 15% surcharge of $750.

Defendant appeals the sentence, claiming that the district court abused its sentencing discretion by only basing its decision on the fact that the victim had been killed and on its perceptions of defendant's inability to complete substance abuse treatment without incarceration. We find that the district court did not abuse its discretion and affirm the sentence.

Our scope of review is for correction of errors at law. Iowa R. App. P. 4. It is well established that the sentence imposed in a criminal case is a matter of the district court's discretion. See State v. Grgurich, 253 N.W.2d 605, 606 (Iowa 1977). Section 907.5 of the Iowa Code provides that when choosing probation as a sentencing option, the judge should first ascertain whether it will promote the rehabilitation of the defendant and the protection of the community from further offenses by the defendant and others. We will not reverse a sentencing decision unless the district court has abused its discretion. State v. Ramirez, 400 N.W.2d 586, 590 (Iowa 1987). To find abuse of discretion in a denial of probation, defendant must show "that such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable."

State v. Morrison, 323 N.W.2d 254, 256 (Iowa 1982) (quoting State v. Buck, 275 N.W.2d 194, 195 (Iowa 1979)).

The duty of a sentencing judge in every case is to consider the available options, to give due consideration to all circumstances in the particular case, and to exercise that option which will best accomplish justice both for society and for the individual defendant. State v. Robbins, 257 N.W.2d 63, 70 (Iowa 1977). As stated in State v. Hildebrand, 280 N.W.2d 393, 396 (Iowa 1979) (quoting State v. McKeever, 276 N.W.2d 385, 387 (Iowa 1979)):

> [T]he punishment must fit the particular person and circumstances under consideration; each decision must be made on an individual basis, and no single factor, including the nature of the offense will be solely determinative. (Emphasis in original.)

Defendant contends the court sentenced him to incarceration because of there having been a death involved. The court, in fact, acknowledged that it would be wrong for the sentence to be based upon only one circumstance—an attending circumstance—(viz. the death of an individual) in deciding upon the appropriate sentence. See Hildebrand, 280 N.W.2d at 396. As in State v. Wright, 340 N.W.2d 590, 593 (Iowa 1983), the judge here gave some weight to all relevant factors known to him, and chose those circumstances that he felt were relevant and important to his decision as to the appropriate sentence.

The carnage on the roads and highways resulting from intoxication is a legitimate concern of the sentencing judge. There may be reasonable and legitimate disagreement by scholars, lawyers, alcoholism counsellors, corrections officials, and even judges as to the sentence selected in a particular case, but as was stated in State v. Jackson, 204 N.W.2d 915, 917 (Iowa 1973):

> [I]n the end, no judge can abdicate his individual responsibility to pass sentence in each case according to his lights, within the statutory limits. Each judge must grapple with the facts and circumstances in the case before him and arrive at the sentence he regards as right.

The sentencing of any individual defendant is a serious and lonely undertaking. The sentencing judge must follow the statutory admonitions, while employing the wisdom gleaned from proponents of varying forms of correctional treatments, as well as from his or her own experience and beliefs.

In this case, the sentencing judge determined (correctly, it would seem) that defendant had a "very very serious problem with alcohol." Without much doubt, the cause of the tragic accident and loss of life was defendant's condition resulting from alcohol abuse. The judge also apparently determined that defendant's rehabilitation and the avoidance of further offenses by this defendant required the successful treatment of the problem. It was not an abuse of the judge's discretion to believe, in view of the circumstances, that defendant may have had only a "jailhouse conversion," rather than a genuine change in his life of excessive drinking.

It is obvious that the sentencing judge believed, and probably with justification, that he could motivate defendant to change his life and his drinking problem by ordering a period of incarceration in such institution as the department of corrections should designate. It was within the sentencing judge's discretion to decide that incarceration would serve the ends prescribed by statute more than would a suspended sentence, probation, a requirement of treatment, and total abstinence from the use of alcohol, coupled with the ability to resort to the sterner alternative of incarceration in the event the conditions of probation were not adhered to. If the defendant does not overcome his problem of alcohol abuse as a result of his imprisonment, the hoped-for rehabilitation will probably not be achieved. Without successful treatment of his apparent alcoholism, the chance of his commission of other offenses due to his alcohol abuse remains. The best assurance that the defendant will not repeat this or other alcohol related crimes is to eliminate his use of alcohol. Diversity of opinion on how to accom-

plish that exists even among so-called experts in the field of treatment. The sentencing judge has the discretion to believe that the most effective motivation to assume a future life of sobriety is by imprisonment. Whether such disposition will have the effect of enhancing the rehabilitation of the defendant and the protection of the community from further offenses by the defendant and others will have to await the ultimate effect of this particular sentence. Hopefully, his incarceration will include a regimen of treatment and counselling aimed at the elimination of this problem. Certainly, this is the hope and intent of the sentencing judge.

After careful consideration, we conclude that the district court's denial of probation was not an abuse of discretion. The court did not merely consider the two factors that defendant alleges. Rather, the court's sentencing decision was based upon various other factors as well: the seriousness of the offense, the impact on the victim's family, the circumstances surrounding the killing of the victim, defendant's lengthy and serious alcohol abuse problem, and defendant's unwillingness to complete voluntary alcohol abuse treatment shortly after the offense. We believe that a sentencing decision based on these grounds is not "to an extent clearly unreasonable," and we therefore affirm the district court's sentence.

AFFIRMED.