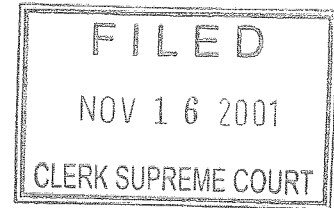


IN THE COURT OF APPEALS OF IOWA

No. 1-694 / 01-162
Filed November 16, 2001



STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANTONIO NAVARRO-FLORES,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Cynthia A. Moisan,
District Associate Judge.

Antonio Navarro-Flores appeals from his sentence imposed following a
guilty plea to operating while intoxicated, third offense, in violation of Iowa Code
section 321J.2 (1999). **CONVICTION AFFIRMED; SENTENCE VACATED AND
CASE REMANDED FOR RESENTENCING.**

Linda De. Gallo, State Appellate Defender, and Nan Jennisch, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel L. Mullins, Assistant Attorney
General, John P. Sarcone, County Attorney, and Ralph E. Marasco and Linda
Zanders, Assistant County Attorneys, for appellee.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

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ZIMMER, J.

Antonio Navarro-Flores appeals from his sentence imposed following his guilty plea to operating while intoxicated, third offense, in violation of Iowa Code section 321J.2 (1999). He contends the district court failed to adequately afford him his right to allocution as required by the Iowa Rules of Criminal Procedure. We affirm his conviction, but vacate his sentence and remand for resentencing.

Antonio Navarro-Flores pled guilty to operating while intoxicated, third offense, in violation of Iowa Code section 321J.2 (1999). The district court sentenced him to a term not to exceed five years in prison and imposed a \$2500 fine. On appeal, Navarro-Flores claims the trial court failed to afford him his right to allocution under Iowa Rule of Criminal Procedure 22(3)(d).

Iowa Rule of Criminal Procedure 22(3)(d) affords the defendant a right to make a statement in mitigation of punishment. This right is known as the right of allocution. *State v. Craig*, 562 N.W.2d 633, 635 (Iowa 1997). To comply with this rule, a district court must give a defendant an opportunity to volunteer information that would support his or her cause. *State v. Duckworth*, 597 N.W.2d 799, 801 (Iowa 1999). The court must do so during the sentencing proceeding and prior to sentencing, not during the guilty plea or postsentencing proceedings. See *Id.*; *Craig*, 562 N.W.2d at 636. Our review, therefore, is limited to the sentencing record. *Id.*

We conclude the district court did not afford Navarro-Flores his right of allocution. Following a brief discussion with the defendant which confirmed he was aware of the contents and recommendation of the presentence investigation, the court proceeded to pronounce sentence.

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The record does not indicate the defendant was given the opportunity to speak in mitigation of punishment. We conclude Navarro-Flores has shown he was not afforded his right to allocution under Iowa Rule of Criminal Procedure 22.

We affirm Navarro-Flores's conviction but vacate his sentence and remand for sentencing.

**CONVICTION AFFIRMED; SENTENCE VACATED AND CASE
REMANDED FOR RESENTENCING.**