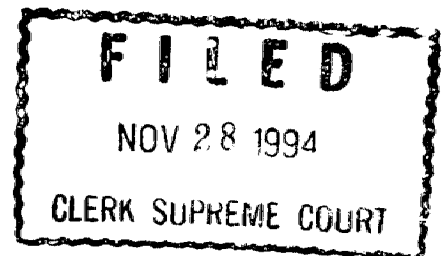


IN THE COURT OF APPEALS OF IOWA

No. 4-384 / 93-1843



STATE OF IOWA,

Plaintiff-Appellee,

vs.

GYPSY LYNN HALL,

Defendant-Appellant.

Appeal from the Iowa District Court for Pottawatomie County, Keith E. Burgett, Judge.

Defendant appeals from judgment and sentence imposed upon her plea of guilty to forgery, in violation of Iowa Code section 715A.2(1)(b) (1993). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shari Barron, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Ann E. Brenden, Assistant Attorney General, Richard Crawl, County Attorney, and Chris Wilson, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Habhab and Huitink, JJ.

SACKETT, P.J.

Defendant-appellant Gypsy Lynn Hall appeals from the sentence entered following her conviction of forgery, in violation of Iowa Code section 715A.2(1)(b) (1993). Defendant contends the district court abused its discretion in sentencing her because it considered only one factor in arriving at the sentence. We affirm.

A trial information was filed in Pottawatomie County charging defendant with two counts of forgery. Defendant entered a plea of guilty to one count of forgery and the second charge was dismissed on the State's motion. The district court sentenced defendant to a term of imprisonment of not to exceed five years and then suspended the sentence and put defendant on probation. As a condition of the probation, the district court ordered defendant to reside at the residential correctional facility "until maximum benefits had been achieved."¹

Defendant did not object to the sentencing consideration used by the trial court. The State contends, consequently, error was not preserved. Defendant contends she had no obligation to object. We affirm on other grounds and need not address the preservation of error argument advanced by the State.

We review for an abuse of discretion. See State v.

1. Maximum benefits were not further defined.

Messer, 306 N.W.2d 731, 732 (Iowa 1981); State v. Dvorsky, 322 N.W.2d 62, 67 (Iowa 1982). Defendant must show the district court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. See State v. Ramirez, 400 N.W.2d 586, 588 (Iowa 1987).

At sentencing, the judge told defendant he had read the presentence report. Defendant was given the opportunity to tell the court about her current situation. Defendant told the judge she was living with her boyfriend and she had a job as a stripper. The job pays \$75 an hour and she is on call twenty-four hours a day. Defendant said she loved the job and it was legal.

The court interrupted and asked defendant if she were making \$75 an hour, why she could not hire her own attorney. The following discussion took place:

DEFENDANT: I just started this job a week ago . . .

THE COURT: All right.

DEFENDANT: So -- and I mean I'm trying to get back on my feet. I've been out for almost a year and a half. I've did everything myself. I've not turned to my family for anything

Defendant's attorney interjected:

DEFENDANT'S ATTORNEY: Well, Gypsy has been in the juvenile system quite a bit, judge. She almost has a surrogate mother with Mrs. Megal in our office. She graduated into the adult system at her boyfriend's request on a couple of bad checks which doesn't relieve her of any responsibility as far as the checks go -- . . .

. . . .

THE COURT: You're going to have to clean up and get straight with the world as well as with yourself and anybody that you deal with. And until you do, there isn't going to be any opportunity for you to ever get along. There isn't any way -- there isn't any way under the sun that a young lady is going to benefit from taking her clothes off in the public.

Defendant complains the trial court only considered her work as a stripper in imposing sentence. She sets forth the following portion of the record in support of her position:

THE COURT: It's very hard for me to have a lot of compassion for a person who's displaying her body nude to the public in order to make a living.

DEFENDANT: I understand that.

THE COURT: I don't think you do. I don't think you understand it at all. The background history that you've gone through has been one of -- difficulty with a lot of opportunities to fly straight and of course you're in that position right now where you would prefer continuing on with a lewd and lascivious lifestyle in order to make a living . . .

.

THE COURT: I'm very sorry for you and the reason I am sorry for you is because everything that you're saying is lewd, lascivious and immoral in my standard and it is in every other person's standard that doesn't -- I don't think if it is acceptable in some society, it isn't acceptable to me and it never will be and it's never going to -- you're never going to convince me that I'm going to sit here and accept the fact that a young lady like you is going to take their clothes off in the presence of some weirdo for money and that's what they are. They're weirdos. And you're entertaining weirdos and the people that are benefiting from what you're doing are also guilty of an awful lot of different kinds of -- miscreant ways. I don't have any other way to put it. But I'm not going to put you back in that kind of situation. You -- you need to be under strict supervision and probationary rules that are

usually fairly liberal aren't suitable. You're going to have to go down to the residential facility where somebody can look after you day after day until you get your mind squared around to where you know what's right and what's wrong.

Defendant contends this dialogue shows the sole reason the district court had for sending her to the residential correctional facility was because she was employed as a stripper.

When selecting a particular sentence, the court must consider all relevant factors to determine the proper sentence. See State v. Hildebrand, 280 N.W.2d 393, 396 (Iowa 1979). The minimal essential factors to be considered when exercising sentencing discretion include the circumstances of the case, the nature of the offense, and the defendant's age, character, propensities, and chances of reform. Dvorsky, 322 N.W.2d at 67; Iowa Code § 907.5 (1993). The court must actually apply these factors. Hildebrand, 280 N.W.2d at 396. No one factor is to be solely determinative. State v Kelley, 357 N.W.2d 638, 640 (Iowa App. 1984). The court must exercise the sentencing option that best accomplishes justice for society and the defendant after consideration of all pertinent sentencing factors. Id.; Iowa Code § 907.5 (1993).

Where defendant's argument fails is the record indicates the trial court considered more than her employment in fixing sentence. While we agree with defendant that a trial judge should not base a sentencing

decision solely on a defendant's job description, that clearly did not happen here. A reading of the record made at sentencing shows the trial court had considered other things. The trial judge said he had read the presentence report. The report revealed defendant has had and does have a number of problems. She is only eighteen but has been involved in the juvenile court since 1984, when she admitted her involvement in a number of offenses. Defendant was placed in Toledo and a mental health facility. She suffers depression and has threatened suicide. Defendant's job history shows she has maintained employment for less than a month and she has held a number of jobs. Defendant's employment as a stripper has been of recent origin.

The court considered defendant's age, her troubled personal history, and her leaving the medical field for which she has some training. The court only lectured defendant about stripping when defendant told the judge a deferred judgment was warranted so as not to jeopardize her nursing career by putting a felony on her record.

Additionally, the court was responding to defendant at the hearing where she repeatedly interrupted the court. We find no abuse of discretion.

AFFIRMED.