

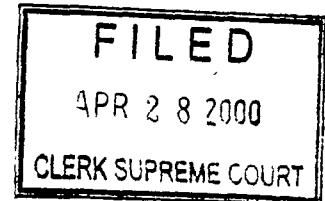
IN THE COURT OF APPEALS OF IOWA

No. 0-048 / 99-0761
Filed April 28, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAY ALAN MONSON,
Defendant-Appellant.



Appeal from the Iowa District Court for Cerro Gordo County, Jon S.
Scoles, Judge.

Defendant appeals from the sentence entered following his guilty plea to second-degree possession of stolen property. See Iowa Code §§ 714.1(4), 714.2(2), 714.3 (1999). Defendant contends the district court abused its discretion in imposing the maximum sentence. **AFFIRMED.**

James M. Stanton of Stanton & Sorensen, Clear Lake, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, Paul L. Martin, County Attorney, and Steven Tynan, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Vaitheswaran, JJ.

000600

SACKETT, C.J.

The defendant, Jay Alan Monson, appeals the sentence imposed following his guilty plea to possession of stolen property in the second degree, in violation of Iowa Code sections 714.1(4), 714.2(2) and 714.3 (1997). Defendant asserts the district court abused its discretion in sentencing the defendant to an indeterminate term not to exceed five years. We affirm.

Defendant was charged by trial information with possession of stolen property in the second degree in violation of Iowa Code sections 714.1(4), 714.2(2) and 714.3. On March 1, 1999 the defendant agreed to plead guilty to possession of stolen property in the second degree in violation of Iowa Code sections 714.1(4), 714.2(2) and 714.3.

On April 16, 1999 the defendant appeared before the district court for sentencing. The prosecutor recommended a suspended sentence and probation. The defendant testified on his own behalf and presented four witnesses who all stated the defendant should receive probation. The presentence investigation recommended incarceration for the following reasons:

The defendant has exhausted all of his resources in the community, mainly substance abuse treatment. The defendant continues to use illegal drugs and most likely still is involved in dealing drugs. There appears to be a heavy correlation between the defendant using drugs and engaging in criminal activity and it is strongly felt that he is not appropriate for probation supervision. While on Federal supervision he had violations consisting of using drugs and this pending offense occurred while under Federal supervision.

Jan Lewerke, the presentence investigator, stated at the sentencing hearing that the primary reason for recommending incarceration is to prevent the defendant from engaging in any further criminal activity.

000601

The district court considering the entire file, minutes of testimony and the presentence investigation report sentenced the defendant to an indeterminate term not to exceed five years. The district court stated:

"[B]ut the court believes that both for protection of society, because the evidence here is that you're continuing to commit illegal activities, but also for the rehabilitation of the defendant – and I know that, you know, I can't expect you to agree with me in that regard, but I sincerely believe that for your own rehabilitation, in the long term, that's going to require incarceration. And I'd like to think that you could do that on your own street probation, but everything I've seen over the last ten years and even over the last twelve months would indicate that that's just not likely going to happen. I'm just afraid, frankly, that if I put you on street probation, you're going to end up in even deeper trouble and more crimes and more problems than you have right now and I sincerely hope that perhaps by having extensive substance abuse treatment while you're incarcerated that once you're released that part of your life will be behind you and you'll be able to become a productive member of society and a good parent and a good friend and all of those things that I think you have the potential of doing."

Sentencing decisions of the district court are cloaked with a strong presumption in their favor. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). We review the court's sentencing decision for an abuse of discretion. *State v. Laffey*, 600 N.W.2d 57, 62 (Iowa 1999). "An abuse of discretion is found only when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Id.* (quoting *State v. Privitt*, 571 N.W.2d 484, 486 (Iowa 1997)). Reasoned exercise of discretion is the hallmark of any proper sentencing procedure. *State v. Cooley*, 587 N.W.2d 752, 754 (Iowa 1998). The Iowa Supreme Court has summarized the sentencing court's duty this way:

The trial court and we on review should weigh and consider all pertinent matters in determining proper sentence, including the nature of the offense, and attending circumstances, defendant's age, character and propensities and chances [for] reform. The courts

000602

owe a duty to the public as much as to defendant in determining a proper sentence. The punishment should fit both the crime and the individual.

State v. Hildebrand, 280 N.W.2d 393, 396 (Iowa 1979). The Court has also observed that "[e]ach sentencing decision must be made on an individual basis, and no single factor alone is determinative." *Cooley*, 587 N.W.2d at 755 (quoting *State v. Johnson*, 513 N.W.2d 717, 719 (Iowa 1994)). Furthermore, Iowa Code section 901.5 provides in pertinent part:

The court shall determine which [sentencing option] is authorized by law for the offense, and of the authorized sentences, which of them or which combination of them, in the discretion of the court will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.

Cooley, 587 N.W.2d at 755; Iowa Code § 901.5 (1999).

We conclude the district court did not abuse its discretion when it sentenced defendant to an indeterminate term not to exceed five years. The district court concluded that for the protection of society from further criminal activity and for the rehabilitation of the defendant incarceration was necessary. These reasons are neither untenable nor unreasonable. The sentence imposed was within the statutory guidelines and was within the court's reasonable sentencing discretion to decide the defendant and the public would benefit most from a term of imprisonment. See *State v. Adams*, 554 N.W.2d 686, 693 (Iowa 1996). We conclude the district court did not abuse its discretion.

AFFIRMED.

000503