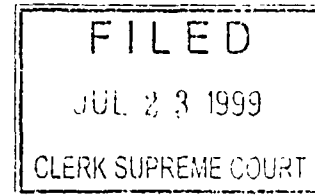


IN THE COURT OF APPEALS OF IOWA

No. 9-163 / 98-0264

Filed July 23, 1999



STATE OF IOWA,
Appellee,

vs.

CARRIE LYNN AMSBARY,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch,
Judge.

Carrie Amsbary appeals her sentences for delivery of a controlled substance,
marijuana, and delivery of a controlled substance, amphetamine. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and David Arthur Adams,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney
General, Thomas J. Ferguson, County Attorney, and Kimberly Griffith, Assistant
County Attorney, for appellee.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

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HUITINK, P.J.

Carrie Amsbary appeals her sentences for convictions for delivery of a controlled substance (marijuana), in violation of Iowa Code section 124.401(1)(d), and delivery of a controlled substance (amphetamine), in violation of section 124.401(1)(c). We affirm on appeal.

On August 21, 1996, Michael Hasstedt, who was cooperating with police officers, purchased approximately one-half ounce of marijuana from Amsbary. She offered to sell Hasstedt a greater amount of marijuana or some amphetamine. On September 10, 1996, as part of a controlled buy, Hasstedt purchased one ounce of marijuana and one-half gram of amphetamine from Amsbary.

Amsbary was charged with delivery of a controlled substance (marijuana) and delivery of a controlled substance (amphetamine). On November 7, 1997, she pled guilty to the charges against her.

At the sentencing hearing, the State recommended Amsbary serve six months in the county jail on the marijuana charge and a term of imprisonment not to exceed ten years on the amphetamine charge. Defendant asked to receive a suspended sentence and to be placed on probation. The presentence investigation (PSI) recommended a jail term followed by probation. The district court sentenced Amsbary to six months on the marijuana charge and a term of imprisonment not to exceed ten years on the amphetamine charge, the sentences to be served concurrently. Amsbary appealed her sentences.

A sentence imposed by the district court will be overturned only for an abuse of discretion. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). An abuse of discretion will not 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. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995).

Amsbary contends the district court abused its discretion by considering the legal problems of her brothers, step-brothers, and parents in entering sentence against her. She asserts she was improperly sentenced based on concerns about her extended family.

The district court stated:

What is kind of apparent is your family seems to be involved in a lot of abuse of different substances. Your brothers have had trouble with it, and now you have trouble with it. It seems to run in your family, not much direction, not much desire to be law-abiding citizens. But more specifically with regard to you, your use of drugs is kind of surprising and your sale of drugs given the difficulties I guess your brothers and step-brothers have had as well as actually the problems your parents apparently have had with the various abuse of substances; and yet you still went ahead and voluntarily did these acts.

From the court's statements, it is apparent defendant was not sentenced based on the legal problems of her relatives. The court was stating defendant had a good example of the problems which can arise from the abuse of drugs, but she still decided to use and sell drugs. Defendant's knowledge of the problems associated with drug use was a legitimate factor for the court to consider.

Amsbary also contends the district court abused its discretion by misinterpreting her legal history. She agrees the court could properly consider her past criminal history. *See State v. LeGrand*, 501 N.W.2d 59, 63 (Iowa App. 1993).

The court originally thought defendant was on probation for possession charges at the time of her arrest for the present charges. Defendant cleared up this misunderstanding during the sentencing hearing. The court then correctly stated defendant had been arrested for possession of marijuana and methamphetamine prior to her arrest on the current charges. Considering the prior arrests, the court stated:

Usually that's a wake-up call for most people, but apparently that wasn't a wake-up call for you. And yet you still went ahead and sold even though you had been arrested before for the same type of offenses

We conclude the district court did not abuse its discretion in mentioning the prior arrests.

Finally, Amsbary contends the district court abused its discretion by not giving sufficient consideration to the accommodation nature of the offenses. She states the amounts of marijuana and amphetamine delivered were in personal use amounts, which shows she was only a middleman for other drug dealers.

The sentences given were within the statutory guidelines. The court considered several factors in entering the sentences in this case. We determine the district court did not abuse its discretion in sentencing defendant to a term of imprisonment instead of probation.

We affirm defendant's convictions and sentences. Costs of this appeal are assessed to defendant.

AFFIRMED.