

IN THE COURT OF APPEALS OF IOWA

No. 7-408 / 96-1155

000365

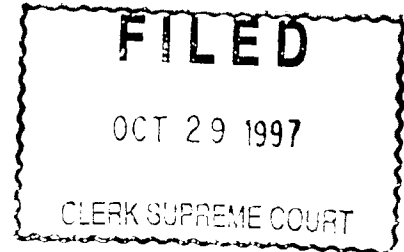
STATE OF IOWA,

Appellee,

vs.

LORENCE W. ACKERMAN,

Appellant.



Appeal from the Iowa District Court for Johnson County, Sylvia Lewis,
District Associate Judge.

Lorence W. Ackerman appeals the judgment and sentence entered upon his conviction of domestic assault causing injury in violation of Iowa Code sections 708.1(1) and 708.2A(2)(b) (1995). **AFFIRMED.**

Dennis A. Bjorklund, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, J. Patrick White, County Attorney, and Anne Lahey, Assistant County Attorney, for appellee.

Considered by Cady, C.J., and Huitink, and Vogel, JJ.

CADY, C.J.

Lorence Ackerman appeals the judgment and sentence for his conviction of domestic assault causing injury. Ackerman claims he received ineffective assistance of counsel and the trial court erred in sentencing. We preserve Ackerman's ineffective assistance of counsel claim for postconviction relief proceedings and we affirm the trial court's sentence.

The State charged Ackerman with domestic assault after he "threw his wife to the floor, hit her and grabbed a yardstick and hit her repeatedly until the stick broke." Ackerman's wife suffered bruising to her back, forehead, temple area, ears, cheek, arms, and other parts of her body. Following the assault, Ackerman voluntarily obtained substance abuse treatment and counseling.

Ackerman pleaded guilty to the domestic assault charge. The district court sentenced Ackerman to thirty days incarceration with all but two days suspended, one year supervised probation, attendance at a batterer's program, a \$250 fine, and costs. On appeal he argues his counsel provided ineffective assistance by advising him to plead guilty and hope for a deferred judgment, and by failing to explain the consequences of the guilty plea. Ackerman also argues the district court abused its discretion in imposing a sentence that was too severe.

I. Ineffective Assistance of Counsel

Ackerman asserts ineffective assistance of counsel occurred when counsel advised him to plead guilty and hope for a deferred judgment, and by failing to

explain the consequences of the guilty plea. The record is insufficient for us to address this issue on direct appeal. Ackerman must present this claim in an application for postconviction relief to permit the record to be developed and give Ackerman's counsel an opportunity to explain his actions. We preserve this claim for postconviction relief proceedings.

II. Sentencing

A sentence will be reversed on appeal only upon showing the trial court abused its discretion. *State v. Rodenburg*, 562 N.W.2d 186, 187 (Iowa 1997). An abuse of discretion will not be found unless the defendant shows the court's discretion was exercised on clearly untenable grounds or to an extent clearly unreasonable. *Id.* The trial court is in the best position to assess an individual situation and determine the appropriate sentence. *See State v. Luedtke*, 279 N.W.2d 7, 8 (Iowa 1979). In exercising its discretion, the district court must consider all relevant factors in determining a proper sentence including the nature of the offense, the attending circumstances, and the defendant's age, character, and propensities for reform. *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995).

Generally, a sentencing court is not required to provide reasons for rejecting particular sentencing options. *Id.* While a sentencing court must consider all of the circumstances of a particular case, the court is not required to acknowledge each claim of mitigation raised by the defendant. *State v. Boltz*, 542 N.W.2d 9, 11 (Iowa App. 1995). Further, the failure to acknowledge a particular sentencing circumstance

does not necessarily mean it was not considered. *Id.* Instead, we look to the entire record to see if the reasons articulated by the trial court are sufficient to determine whether an abuse of discretion occurred. *Id.*; see *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989). Even a succinct and terse statement of reasons may be sufficient as long as the brevity does not prevent us from reviewing the exercise of the trial court's sentencing discretion. *Boltz*, 542 N.W.2d at 11; *Johnson*, 445 N.W.2d at 343. Conversely, the record supports a failure to exercise discretion when only a single, nonspecific factor is identified by the sentencing court. *Boltz*, 542 N.W.2d at 11.

Ackerman argues the trial court failed to consider the circumstances of his family history, his criminal history, and his efforts at rehabilitation. He also claims the court cited factors too general to adequately substantiate the sentence. Ackerman asserts his circumstances are comparable to those in *State v. Cooper*, 403 N.W.2d 800 (Iowa App. 1987), where we found the "circumstance of the offense and the defendant's background" were insufficient reasons to allow for review of discretion.

We first consider Ackerman's complaint the court did not consider his family situation. The record reveals the court not only heard Ackerman's description of his family situation, but accommodated him by allowing him to serve his jail time on the weekend, thus enabling him to care for his children. Ackerman next claims the court failed to consider his criminal history and rehabilitation efforts. Here too the record provides ample evidence the court heard these factors and considered them. Finally,

Ackerman argues his case is comparable to *State v. Cooper*. *Cooper*, 403 N.W.2d 800. We note that *Cooper* involved reasons contained in a sentencing order with no accompanying transcript of the sentencing hearing, resulting in speculation about what the sentencing judge meant by general statements in the order. *Id.* at 802. Here, the record forms an adequate basis for review. Moreover, the record indicates the judge heard and considered the defendant's mitigating factors. We therefore conclude the trial court did not abuse its discretion.

AFFIRMED.