

MAY 26 1981

CLERK SUPREME COURT

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IN THE IOWA COURT OF APPEALS

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed May 26, 1981

vs.

)

LEONARD OBERHOLTZER,

)

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64439

Defendant-Appellant.)

Appeal from Scott District Court - Jack Broderick, Judge.

Defendant appeals from sentence imposed following his plea of guilty to a charge of OMVUI. AFFIRMED.

Jorge Gomez, Jr. of Gomez, Feuerbach, May, Pries & Tobey, Davenport, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Mark Schuling, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Defendant Leonard Oberholtzer appeals from the sentence imposed following his plea of guilty to an OMVUI charge. He contends that the trial court abused its discretion in refusing to grant him a deferred sentence; we disagree.

I.

The defendant spent the afternoon of March 24, 1979 drinking with friends. He failed to stop at a stoplight on the way home and struck another car. After results of a breath test revealed a blood alcohol level of .217, defendant was arrested for OMVUI (first offense) in violation of section 321.281, The Code 1979. The defendant withdrew his initial plea of not guilty and subsequently pleaded guilty to the charge. Defendant then requested a deferred sentence and the presentence investigating officer recommended that sentence be deferred. The request was denied and defendant was fined \$300 and sentenced to five days in jail (sentence suspended).

II.

The trial court made the following statement in sentencing the defendant:

Based upon the information as contained in the presentence investigation, the fact that there was an accident which was the fault of the defendant, the defendant had at the time a blood alcohol test of .217, and the feeling of the presentence investigating officer that there is potential of recurring arrests of this nature, it is the decision of the Court that defendant's request for deferred sentence is denied.

Defendant contends that the trial court erred in relying on the fact that he had caused an accident and on the allegedly incorrect impression that the presentence investigating officer saw a potential for recurring OMVUI arrests. We find no merit in the defendant's contention.

If the sentence imposed is within the statutory maximum, this court will interfere with the sentencing decision of a trial court only where the defendant has shown an abuse of discretion in selection of the sentence. State v. Luedtke, 279 N.W.2d 7, 8 (Iowa 1979); State v. Buck, 275 N.W.2d 194, 195 (Iowa 1979); see State v. Killpack, 276 N.W.2d 368, 373 (Iowa 1979). Normally, an abuse of discretion exists only where there is no support for the decision in the record, or, in other words, where "the result [is] so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will" State v. Warner, 229 N.W.2d 776, 783 (Iowa 1975). See also Buck, 275 N.W.2d at 195. Applying this standard to the case at bar, we find no abuse of

discretion by the trial court. In ruling on a motion for deferred sentence, the sentencing court should attempt to provide maximum opportunity for the defendant's rehabilitation as well as maximum protection for the public from further offenses by the defendant. § 907.5, The Code 1979. Factors to be considered in granting a deferred sentence are the defendant's age, prior convictions, employment and family circumstances, the nature of the offense, and such other considerations as are appropriate. Id. In light of these guidelines, we think the fact that the defendant caused an accident was properly considered by the trial court. Moreover, the trial court does not appear to have been mistaken in concluding that the presentence investigating officer saw the possibility of recurring OMVUI arrests, since the report prescribes attendance at drinking drivers' school to "lower . . . [the] potential for a future arrest." Finally, the court was not bound by the presentence report's recommendation that the defendant be given a deferred sentence. State v. Grgurich, 253 N.W.2d 605, 606 (Iowa 1977). Thus, finding no abuse of discretion on the part of the trial court, we affirm defendant's sentence.

AFFIRMED.