IN THE COURT OF APPEALS OF IOWA

No. 0-416 / 99-1460
Filed September 27, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DARRYL LUCKY JORDAN,
Defendant-Appellant.

FILED
SEP 27 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Bremer County, Peter B. Newell, Judge.

Defendant appeals from the sentence imposed following his *Alford* plea to the charge of assaulting a peace officer. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Stephan J. Japuntich, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kristin Mueller, Assistant Attorney General, and Kasey E. Wadding, County Attorney, for appellee.

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

ZIMMER, J.

Darryl Jordan appeals from the sentence imposed following his *Alford* plea to the charge of assault on a peace officer in violation of Iowa Code section 708.3A(3) (1999). He contends the district court relied on an improper factor in sentencing and the court erred by failing to include credit for time served in the sentencing order. We affirm.

I. Background Facts and Proceedings. On July 16, 1999, the State charged Jordan with assaulting a peace officer causing bodily injury in violation of Iowa Code sections 708.3A(3) and 708.1 (count 1), interference with official acts causing bodily injury in violation of section 719.1 (count 2), domestic abuse assault in violation of sections 708.2A(2)(b) and 708.1 (count 3), and domestic abuse assault in violation of sections 708.2A(2)(b) and 708.1 (count 4). Jordan pleaded guilty to counts 1 and 3. His plea to assaulting a peace officer was an *Alford* plea. *Alford* pleas are used in situations in which criminal defendants are unwilling or unable to supply a factual basis but a factual basis can be gleaned from the record. *See North Carolina v. Alford,* 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970). Jordan provided a factual basis for his plea to the domestic abuse charge. In exchange for Jordan's guilty pleas, the State agreed to dismiss counts 2 and 4 and recommend concurrent sentences.

The district court sentenced Jordan to an indeterminate two-year term of confinement for the assault on a peace officer charge and a sixty-day term on the domestic abuse assault charge. The court ordered these sentences to be served concurrently. At sentencing, the court gave Jordan a credit for sixty days he had

already spent in jail. The written judgment and sentence filed by the court also stated the defendant would receive credit for time served.

On appeal, Jordan contends the court relied on an improper sentencing factor. He points to an exchange which occurred during sentencing in which the prosecutor mentioned defendant's "inability . . . to take any responsibility for his actions," and then made an apparent reference to the *Alford* plea. In response to defendant's exception to the prosecutor's comments, the court indicated it was proper to consider defendant's statements and demeanor at sentencing. Defendant argues this indicates the court used the *Alford* plea to enhance his sentence. Defendant also contends the district court erred by not including in its sentencing order an accounting of the amount of time defendant was to be credited for having already served during his pre-trial detention period. He contends this is required by Iowa Code sections 901.6 and 903A.5 and Iowa Rule of Criminal Procedure 23(5)(b).

II. Scope of Review. A challenge to the district court's sentencing decision is reviewed for an abuse of discretion. *State v. Sandifer,* 570 N.W.2d 256, 257 (Iowa App. 1997). An abuse of discretion may be found when the sentencing court "exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Thomas,* 547 N.W.2d 223, 225 (Iowa 1996). Sentencing decisions carry a strong presumption in their favor. *State v. Cheatheam,* 569 N.W.2d 820, 821 (Iowa 1997).

III. Sentencing Discretion. Jordan claims the court considered the prosecutor's reference to his *Alford* plea and improperly "aggravated" his

sentence due to his failure to admit guilt. The court gave the following explanation of its reasons for imposition of the sentence selected:

> That you were convicted recently of being an Accessory After the Fact. That was less than a year ago that you were convicted of that. That you were on probation at the time that you committed these two offenses, and that these two occasions were both assaults that took place on different days. One is an assault against a woman and one is an assault against a police officer.
>
> I think that, you know – Well basically, I think one of the most important functions of the court system is to protect society against violent individuals. And you have had prior assaults in the past. And now you have got two more assaults and you're on probation. So, generally, I think when somebody is on probation and they haven't been able to abide by the terms and conditions of probation, then second chances are not something that should be offered, especially when somebody has been to prison before and they know that a legitimate threat, they could go back to prison.
>
> So, based upon what I know about you and based on the nature of these offenses, I am going to follow the State's recommendation. . . .

We conclude the court did not consider Jordan's use of an *Alford* plea in determining the appropriate sentence. The court did not state it would consider the nature of the defendant's plea in determining the proper sentence. *Cf. State v. Ramirez,* 400 N.W.2d 586, 590 (Iowa 1987) (concluding defendant presented no lawful reason to withdraw guilty plea where there was no evidence sentencing court considered defendant's refusal to admit guilt at sentencing).

Jordan takes issue with the court's comment that it could rely on his "demeanor" in sentencing him. A defendant's demeanor reflects on his character and is, therefore, a proper consideration for the court at sentencing. *State v. August,* 589 N.W.2d 740, 744 (Iowa 1999). The court's consideration of the defendant's statements and demeanor at sentencing do not show the court improperly considered Jordan's use of the *Alford* plea procedure in determining

the appropriate sentence. The factors upon which the district court relied support the sentences imposed. We find no abuse of discretion on this issue.

IV. Credit for Time Served. Jordan cites Iowa Code sections 901.6 and 903A.5 and Iowa Rule of Criminal Procedure 23(5)(b) for the proposition that the district court is required to include an accounting of a defendant's credit for time served in the sentencing order. The Iowa Supreme Court recently rejected the same argument in *State v. Hawk,* ___ N.W.2d ___, ___ (Iowa 2000) (holding Iowa Code sections 901.6 and 903A.5 do not require a judicial accounting of credit for time served). We affirm the district court.

AFFIRMED.