IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,)
vs.)
BENNY LEO DOWELL,)
Defendant-Appellant.)

Filed April 21, 1981

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65190

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CLERK SUPREME COURT

Appeal from Iowa District Court. Harlan W. Bainter, Judge.

Defendant appeals sentence imposed upon his guilty plea to second degree theft in violation of sections 714.1 and 714.2(2), The Code 1979. AFFIRMED.

James R. Standard, of Standard & Tenold, Monmouth, Ill., for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Merle Wilna Fleming, Assistant Attorney General, for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Defendant appeals sentence imposed upon his guilty plea to second degree theft in violation of sections 714.1 and 714.2 (2), The Code 1979. He asserts the court abused its sentencing discretion by refusing to grant him probation. We affirm.

The defendant was originally charged with first degree theft and with being an habitual offender. Pursuant to a plea bargain, the defendant pleaded guilty to second degree theft on April 7, 1980, and the habitual offender charge was dropped. During the sentencing hearing, defendant requested probation and presented four witnesses on his behalf. The court refused to grant probation and imposed a not-more-than five year sentence. Defendant's appeal followed.

I. Scope of Review.

Since this is an action at law, our review in on assigned error. Iowa R. App. P. 4.

II. Sentencing Error.

Defendant contends trial court erred in refusing to grant him probation and in failing to individualize the sentence imposed. We disagree.

The principles for determining the propriety of a sentence are set forth in State v. Overstreet, 243 N.W.2d 880, 887 (Iowa 1976), and restated approvingly in State v. Inger, 292 N.W.2d 119 (Iowa 1980). We need not repeat them here. We note that Iowa R. Crim. P. 22(3)(d) requires the court to state on the record its reason for selecting the particular sentence. In addition, "[a] sentence within statutory limits will be set aside only for an abuse of discretion," State v. Buck, 275 N.W.2d 194, 195 (Iowa 1979).

At the sentencing hearing the only "new" information presented to the court was from four of the defendant's witnesses who testified that defendant's behavior and attitude has improved considerably since he was arrested. On the other hand, as stated by the court, defendant had three felonies by the age of twenty-five and a prior probation. Without further recitation from the record, we have reconsidered the sentencing options of sections 901.5, The Code 1979 and the Overstreet factors. The sentence was within the statutory limits and procedures. We find no abuse of the court's discretion in imposing the sentence here.

Concluding no error occurred, the case is affirmed.

AFFIRMED.