

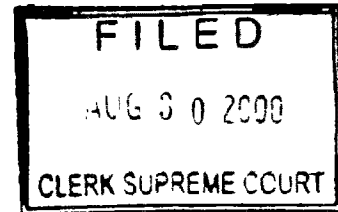
IN THE COURT OF APPEALS OF IOWA

No. 0-521 / 00-503
Filed August 30, 2000

STATE OF IOWA,
Plaintiff-Appellee.

vs.

JERRY WAYNE STEWART,
Defendant-Appellant.



Appeal from the Iowa District Court for Jasper County, Thomas W. Mott,
District Associate Judge.

Defendant appeals from the sentences entered upon his convictions for
operating while intoxicated and driving while barred. **AFFIRMED.**

Corey J. L. Walker of Walker, Knopf & Billingsley, Newton, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney
General, Steve Johnson, County Attorney, and Michael K. Jacobsen, Assistant
County Attorney, for appellee.

Considered by Sackett, C.J., and Streit and Vaitheswaran, JJ.

STREIT, J.

The defendant, Jerry Stewart, complains the district court failed to consider his mental illness when imposing his sentence for driving while barred. Finding no merit to his claim, we affirm.

I. Background Facts and Proceedings.

Stewart was originally charged with operating a motor vehicle while intoxicated, operating a motor vehicle while his license was barred, and assaulting a police officer. He pled guilty to the first two charges.

At the sentencing proceeding, Stewart's attorney stated his client recently had been the subject of psychiatric evaluations, was under psychiatric care, and was on medication. Stewart and the sentencing judge also discussed matters related to Stewart's apparent mental illness, including the psychiatrist whom Stewart was seeing and the medications he had prescribed. The judge, in addition, stated Stewart needed to control his "psychiatric problem." He did not, however, explicitly mention Stewart's mental illness when he imposed Stewart's 180-day jail sentence.

Stewart appeals, claiming the judge did not appropriately consider his mental illness when he imposed the sentence for the driving while barred charge.

II. Standard of Review.

We review the district court's sentencing decision for an abuse of discretion. *State v. Neary*, 470 N.W.2d 27, 29 (Iowa 1991). No abuse of discretion will be found unless Stewart shows such discretion was exercised for reasons clearly untenable or to an extent clearly unreasonable. *See id.*

III. Merits.

Section 901.5 outlines various sentencing options and gives a sentencing judge discretion to choose among the available options. Iowa Code § 901.5 (1999). In exercising this discretion, the judge must consider certain “minimal essential factors” for determining a proper sentence for the defendant. *State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979). These factors include the nature of the offense; the attending circumstances; the chances of defendant’s reform; and the defendant’s age, character, and propensities. *Id.* (citations omitted). A judge’s failure to consider these factors constitutes an abuse of discretion. *Id.*

The sentencing judge does, however, have the right to balance the “minimal essential factors” and to exercise his or her discretion accordingly. *State v. Wright*, 340 N.W.2d 590, 593 (Iowa 1983) (“The right of an individual judge to balance the relevant factors in determining an appropriate sentence inheres in the discretionary standard.”). Moreover, the judge is not “required to specifically acknowledge each claim of mitigation urged by a defendant” and a “failure to acknowledge a particular sentencing circumstance does not necessarily mean it was not considered.” *State v. Boltz*, 542 N.W.2d 9, 11 (Iowa App. 1995). Rather, whether the judge considered a relevant circumstance in imposing a particular sentence is determined by examining the entire record, not just the specific reasons articulated by the judge at that time. *Cf. id.* (examining the entire record to determine if there were sufficient reasons for a particular sentence).

The transcript in Stewart’s sentencing proceeding makes clear the sentencing judge did not overlook Stewart’s apparent mental illness when he

sentenced Stewart to 180 days in jail. After Stewart's attorney alluded to Stewart's illness, the judge and Stewart engaged in a short discussion about the psychiatrist whom Stewart was seeing, the medication he was taking, and the implications of Stewart's inability to control his "psychiatric problem." This discussion indicates the judge thoughtfully contemplated Stewart's mental illness during the sentencing proceeding. There is no merit to Stewart's claim the judge abused his discretion by failing to consider Stewart's mental illness when he imposed a 180-day jail sentence. We affirm the district court.

AFFIRMED.

Vaitheswaran, J., concurs; Sackett, C.J., concurs specially without opinion.