IN THE COURT OF APPEALS OF IOWA

No. 9-470 / 97-1742
Filed September 15, 1999

STATE OF IOWA,

Appellee,

vs.

DOMINGO ZAPATA,

Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Jefferson County, Dan F. Morrison and James P. Reilly, Judges.

Domingo Zapata appeals the sentences imposed upon his convictions of conspiracy to deliver marijuana and delivery of marijuana. **AFFIRMED.**

Edward F. Noyes, Fairfield, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, and Paul Zingg, County Attorney, for appellee.

Considered by Streit, P.J., and Vogel and Zimmer, JJ.

VOGEL, J.

Domingo Zapata appeals the sentences imposed upon his convictions of conspiracy to deliver marijuana and delivery of marijuana. As we find the court did not abuse its discretion in sentencing Zapata to a prison term, we affirm.

Background facts. On March 17, 1997 and April 11, 1997, Zapata sold marijuana to an undercover investigator for the Southeast Iowa Interagency Drug Force Task. On each occasion, the investigator purchased one-quarter pound of marijuana for $500. On April 15th and 16th of 1997, a search warrant was executed on Zapata's home. Police seized two one-quarter pound bags of marijuana, a scale, and packaging materials. Zapata was charged with conspiracy to deliver marijuana, tax stamp violations, delivery of marijuana, and prohibited acts for possession of marijuana. Zapata ultimately entered a guilty plea to the charges of conspiracy to deliver marijuana and delivery of marijuana. On September 29, 1997, Zapata was sentenced to a term not to exceed five years on each charge, with the sentences to run concurrently. He now appeals.

Scope of review. We review the district court's sentencing decision for an abuse of discretion. *State v. Mai*, 572 N.W.2d 168, 170 (Iowa App. 1997). No abuse of discretion will be found unless the defendant shows that such discretion was exercised for reasons clearly untenable or to an extent clearly unreasonable. *Id.*

I. Sentencing. Zapata contends the court abused its discretion in sentencing him to a prison term rather than probation. Specifically, Zapata asserts the court should have considered factors including his favorable work history, his family's

economic dependence on him, and the fact that these drug buys were instigated by the undercover agent. He claims the court abused its discretion in failing to comply with Iowa Code section 901.5, in relying merely upon the nature of the offense as justification for its sentence, and in exercising its discretion on grounds and for reasons clearly untenable or to an extent clearly unreasonable.

Iowa Code section 901.5 (1997) states, in relevant part:

> After receiving and examining all pertinent information, including the presentence investigation report and victim impact statements, if any, the court shall consider the following sentencing options. The court shall determine which of them is authorized by law for the offense, and of the authorized sentences, which of them or which combination of them, in the discretion of the court, will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.

In exercising its discretion, the court may consider a variety of factors, including the nature of the offense and attending circumstances, as well as the defendant's age, character, propensities and chances of reform. *See State v. Boltz*, 542 N.W.2d 9, 10 (Iowa App. 1995). Each sentence should be made on an individual basis, and no single factor should be solely determinative. *See State v. McKeever*, 276 N.W.2d 385, 387 (1979); *see also id.* at 11. However, the failure of the court to acknowledge a particular sentencing circumstance does not necessarily mean it was not considered. *See Boltz*, 542 N.W.2d at 11. Moreover, the court is not required to specifically acknowledge each claim of mitigation urged by a defendant. *Id.*

During the sentencing hearing, the court stated:

I want you to know I have considered the sentencing options in 901.5 of the Iowa Code and my judgment relative to sentence is based upon that which would provide maximum opportunity for your rehabilitation and at the same time protect the community from further offenses by you and others.

* * *

Now, the reason I am giving the sentence is because of the nature of the offense mainly. Drugs are a scourge of society. I have seen many young people whose lives have been ruined and they get started on marijuana generally. I don't know whether you are getting this stuff from some big time operator who is making a ton of money on this or not. You aren't evidently wanting to share that with me.

We have got to put a stop to the traffic of drugs in this country, and the best way I know and the only way I know as a Judge is to send a message to people like you and other people who might be inclined to do what you have done. A thousand dollars worth of marijuana is a lot of marijuana. Evidently, this was probably pretty good stuff to get that kind of money.

I have also considered the fact you have had some prior criminal record, but I'm mainly -- You have got the wrong judge if you think I'm going to be easy on drug cases because I'm not. I think this has got to stop, and that's why I'm giving the sentence that I have imposed.

If you go to the institution with the right attitude, you aren't going to be there any longer than you need to be. We have simply got to send a message that we have got to put a stop to this stuff. That's the reason I'm giving the sentence that I have imposed.

* * *

This is not any fun for me, I will tell you. I think these people got up and said you have a lot of good redeeming qualities. I have got a duty to society, and I hope you understand my situation. I really wish you the best. As I say, I think if you get down there and have the right attitude and do the right thing you aren't going to be there any longer than you need to be. Good luck to you.

Contrary to Zapata's contention, the sentencing judge clearly stated and demonstrated that he took into consideration the sentencing directive in Iowa Code section 901.5. The judge acknowledged that Zapata had redeeming qualities, but explained why he felt a prison sentence was necessary for the protection of society. Moreover, while the court stated that the reason for its sentence was *mainly* due to the nature of the offense, it was clearly not the *sole* reason. The court also mentioned Zapata's past criminal record, Zapata's unwillingness to disclose his drug supplier, and the court's responsibility to protect society from further offenses by Zapata and others. After carefully reviewing the record, we find that the court's reasons for the sentence imposed were not clearly untenable or unreasonable, and therefore find no abuse of discretion. Accordingly, we affirm the judgment and sentences of Domingo Zapata.

AFFIRMED.