FILED
FEB 24 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed February 24, 1982
vs.	)	2-27
MICHAEL JOSEPH LONERGAN,	)	66715
Defendant-Appellant.	)	

Appeal from Boone District Court, James C. Smith, Judge.

Defendant appeals from the sentence imposed on his guilty plea conviction of OMVUI in violation of section 321.281, The Code 1981. AFFIRMED.

Mark W. Bennett of Allen, Babich & Bennett, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General, and Richard L. Cleland, Assistant Attorney General, for plaintiff-appellee.

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

PER CURIAM

Defendant appeals from the sentence imposed on his guilty plea conviction of OMVUI in violation of section 321.281, The Code 1981. We affirm.

Defendant was sentenced to ten days, with all but two days suspended. He then applied for deferred judgment and sentence, but it was denied. He appealed.

I. Defendant first asserts that the trial court had a fixed sentencing policy and that it abused its discretion in refusing to defer his sentence because of the policy.

Sentencing is within the court's discretion, and we will not interfere unless there is an abuse of that discretion. State v. Zaruba, 306 N.W.2d 772, 774 (Iowa 1981). We find no abuse. The defendant presented evidence in support of his application for a deferred judgment, the court ordered a presentence investigation, and the defendant presented witnesses in his behalf. The court had the benefit of all this information before imposing sentence and considered the defendant's case individually. It appears that the court concluded, after considering all the information presented by defendant and in his behalf, that this case was not sufficiently different from the majority of OMVUI cases to warrant a deferred sentence or judgment. The court sentenced him to ten days and suspended all but two of those days. Under section 321.281, if sentenced to incarceration, the defendant must serve a mandatory minimum sentence of two days. Defendant has failed to prove either a fixed sentencing policy or an abuse of discretion.

II. Defendant also asserts that the trial court failed to comply with Iowa R. Crim. P. 22(3)(d) by not stating its reasons on the record for the sentence given. We disagree and think the court adequately stated its reasons for refusing to defer

defendant's sentence. The court, however, did not state its reasons for imposing the minimum two days of incarceration. Where the court imposes the minimum sentence possible under the sentencing statute and does not state its reasons for imposing the mandatory minimum, it is harmless error and remand for sentencing in such a situation is not required. State v. Matlock, 304 N.W.2d 226, 227 (Iowa 1981). Therefore, since the mandatory minimum was imposed by the trial court, this case should not be remanded for resentencing.

AFFIRMED.