IN THE COURT OF APPEALS OF IOWA

No. 8-612 / 97-1372

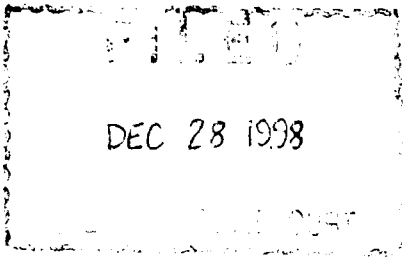
STATE OF IOWA,

Plaintiff-Appellee,

vs.

TOBIAS STEVENSON,

Defendant-Appellant.



Appeal from the Iowa District Court for Des Moines County, William L. Dowell, Judge.

Defendant appeals from his convictions for second-degree burglary and second-degree theft. **AFFIRMED.**

Dennis A. Bjorklund, Coralville, for appellant.

Thomas J. Miller, Attorney General, Roxann M. Ryan, Assistant Attorney General, and Patrick C. Jackson, County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ.

MAHAN, J.

On appeal from his convictions for second-degree burglary and second-degree theft, the defendant claims the sentencing court erred in sentencing him to a harsher sentence than his co-defendant received. He contends the district court abused its discretion in failing to consider the minimal factors necessary to impose a sentence and by giving reasons too general to support the sentence. The defendant also claims the court abused its discretion in denying him a deferred judgment. We affirm.

The defendant, Tobias Stevenson, was seventeen years old when he and a co-defendant, Justin Parrish, burglarized and ransacked a home. They stole property valued at nearly $40,000.

The defendant pled guilty to second-degree burglary in violation of Iowa Code sections 713.1 and 713.5 (1995) and second-degree theft in violation of Iowa Code sections 714.1(1) and 714.2(2). The district court sentenced him to suspended consecutive ten and five-year sentences with a period of probation of five years for each offense. He was ordered to pay court costs, attorney's fees, and restitution to the victims. As a condition of his probation, the court ordered the defendant to reside in a residential correctional facility for 180 days or until maximum benefits had been attained. He was also ordered to perform eighty hours of community service work.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. In criminal cases, sentences are upheld on review unless the judge exercised his discretion on grounds or for reasons clearly untenable or unreasonable. *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995).

The defendant first claims the district court erred in sentencing him to a harsher sentence than was imposed on his co-defendant. He alleges his co-defendant received less probation and community service. The defendant contends such disparate treatment was inappropriate given he had a significantly less serious role in the offense. He claims he never took possession of the stolen shotgun nor did he elect to keep any of the stolen property at his home. In response, the State contends the defendant failed to provide a record concerning what sentence was imposed on the co-defendant. It also claims the record does not reflect whether the same judge imposed the sentences in both cases or if the judge who sentenced the defendant was even aware of the sentence imposed in the co-defendant's case.

The defendant in this comparative sentence argument appears to suggest his sentence should not be based on individual factors, but rather on his co-defendant's sentence. Although the question of comparative sentencing is not before us in this record, it arguably could be considered an abuse of discretion to sentence by comparison because the judge would need to consider inappropriate matters in determining an individual's sentence. Much of the defendant's argument is based on principals derived from other jurisdictions which utilize sentencing guidelines or determinate sentencing. Those principals are inapplicable in Iowa under our indeterminate, discretionary sentencing scheme. We conclude this argument is without merit.

The defendant next claims the sentencing court abused its discretion in failing to consider all attendant circumstances when sentencing him. Specifically, he claims

the court too heavily relied upon the nature of the offense and failed to consider the mitigating factors of his age, his family support, his educational goals, and his absence of a prior adult criminal record.

In exercising its sentencing discretion, the district court must weigh all pertinent matters to determine a proper sentence, including the nature of the offense, the attending circumstances, and the defendant's age, character, and chances for reform. *State v. Thompson*, 494 N.W.2d 239, 240 (Iowa 1992). It is well settled the measure of punishment selected by the district court lies within its sentencing discretion. *State v. Patterson*, 161 N.W.2d 736, 737 (Iowa 1968). The sentencing court's duty is to consider all available sentencing options, give consideration to all circumstances of a particular case, and to exercise the sentencing option which will best accomplish justice for society and for the defendant. *State v. Robbins*, 257 N.W.2d 63, 70 (Iowa 1977).

A review of the sentencing proceeding clearly reveals the court carefully weighed all pertinent matters. The sentence appears carefully tailored to fit the defendant's individual circumstances and needs. The defendant's past record and present attitude show the defendant needs structure for a long term to increase the chance of reform and decrease the chance of recidivism. The need of society for protection from an escalation in the defendant's criminal pursuits also militates for a long, structured sentence for the defendant. We conclude the court did not abuse its discretion in determining the sentence imposed.

Finally, the defendant claims the district court abused its discretion in denying his request for a deferred judgment. We disagree. While a court need not give specific reasons for rejecting a sentencing option, the record must reveal the sentencing court in fact exercised discretion with regard to the options it had. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). The court clearly exercised its discretion in considering and rejecting a deferred judgment. We consider the factors cited by the court in the sentencing proceeding reasonable in the court's exercise of discretion. We affirm the court's refusal to grant a deferred judgment.

AFFIRMED.