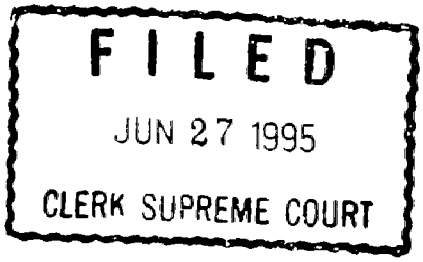
IN THE COURT OF APPEALS OF IOWA

No. 5-053 94-725



STATE OF IOWA,

Appellee,

vs.

ALEXANDER MARTIN,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge.

Alexander Martin appeals the sentence entered upon his conviction, following a guilty plea, of possession with intent to deliver, failure to affix a tax stamp, and possession of a firearm as a felon. **AFFIRMED.**

Alfredo Parrish of Parrish, Kruidenier, Moss, Dunn, Montgomery & Thomas, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Julie Halligan Brown, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kim Griffith, Assistant County Attorney, for appellee.

Heard by Hayden, P.J., and Cady and Huitink, JJ.

CADY, J.

On March 25, 1993, Alexander Martin was charged with the offenses of possession of more than 5 grams of cocaine with intent to deliver (Count I), failure to affix a tax stamp (Count II), and possession of a firearm as a felon (Count III). The charges stemmed from a search of Martin's residence in which the police found a bag containing sixteen individually wrapped pieces of crack cocaine and a revolver. Police also found $814 in cash on Martin.

Martin eventually entered a guilty plea to the charges pursuant to an agreement by the State not to charge Martin as an habitual offender.

At the sentencing hearing, the State requested Martin be sentenced to the maximum seventy-five years on Count I, and five years on Counts II and III to run concurrently. Martin's counsel requested he receive the minimum sentence of twenty-five years on Count I and the minimum sentences of five years on Counts II and III.

Before pronouncing sentence, the court noted it had reviewed the presentence investigation report, and observed that it was the second time Martin had been involved with drugs and delivery of drugs. The court also noted Martin had many prior contacts with the law, had not done well on probation as supported by the new offense, and mentioned the nature of this offense. The Court concluded there is no alternative under the circumstances except for incarceration. The court then

sentenced Martin to a term not to exceed fifty years on Count I and five years on Counts II and III to be served concurrently. Martin appeals from the sentence.

I. Standard of Review

The standard of review applicable to sentences is well-settled. We review for an abuse of discretion. *State v. Smith*, 244 N.W.2d 325, 326 (Iowa 1976). In order to show an abuse of discretion, it must be shown the court exercised its discretion "'on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" *State v. Blackwell*, 238 N.W.2d 131, 138 (Iowa 1976) (quoting *Weeks v. Burnor*, 326 A.2d 138, 140 (Vt. 1974)).

II. Sentencing

Martin challenges his sentence on grounds the court abused its discretion in sentencing him to a fifty-year indeterminate term. Specifically, he complains the court relied solely on the nature of the offense.

An "abuse of discretion is rarely found when the sentence imposed is within the statutory maximum." *State v. Pappas*, 337 N.W.2d 490, 494 (Iowa 1983). It is undisputed the combined sentence imposed upon Martin was within the statutory guidelines provided by the Iowa Code. Thus, it will not be overturned unless the sentencing court failed to exercise its discretion or considered inappropriate matters in determining what sentence to impose. *Id.* at 493. Moreover, on appeal, "the decisions of the trial court are cloaked with a strong presumption in their favor, and until the contrary appears, the presumption is that the discretion of the trial court was

rightfully exercised." *Id.* at 494. "To overcome this presumption . . . an affirmative showing of abuse is required and the burden rests upon the party complaining." *Id.*

Under Iowa law, the minimal essential factors to be considered prior to sentencing include the nature of the offense, attendant circumstances, defendant's age, character, propensities, and chances of reform. *See State v. Dvorsky*, 322 N.W.2d 62, 67 (Iowa 1982). Although the nature of the offense should not alone be determinative, *State v. McKeever*, 276 N.W.2d 385, 387 (Iowa 1979), "[t]his does not mean that the nature of the offense . . . should not be accorded substantial weight in the sentencing determination." *Dvorsky*, 322 N.W.2d at 67. All that is required is that it be apparent from the record that no one factor was the basis for the sentence. *McKeever*, 276 N.W.2d at 388.

The sentencing court articulated several reasons for the sentence imposed, in addition to the nature of the offense. The court stated:

> The Court is required to state its reason for the sentence upon the record. And in this case the Court has reviewed the Pre-sentence Investigation not only in the old case but also in the new case and notes obviously that the -- that this is the second time the Defendant has been involved with drugs and the delivery of drugs, Possession with Intent to Deliver Drugs. And there is a substantial quantity on the second time and there was a fair quantity on the first time around.
>
> The Court does note that the Defendant's prior record is -- certainly has a lot of contacts with law enforcement officers although they're not felony convictions except for the one in 1992. The Defendant has not done well on probation obviously by incurring this new offense and the nature of this offense the Court is satisfied that there is no other alternative in this case except for incarceration. The only question in this case is the length of incarceration.

> And the Court notes that even in the Defendant's own immediate family there are people that are addicted to or apparently have trouble with drugs and the Defendant's activities certainly are done knowingly and he is aware of the consequences of his acts and what it is doing to the community and what it has done to his own family. It is being done for profit.
>
> And the Court is satisfied that the only way to deter the Defendant from future misconduct as well as others who know the Defendant and is aware of his activities is by a substantial period of incarceration. (emphasis added.)

From the record, it is clear that the court considered the relevant factors and stated multiple reasons for the sentence imposed. The nature of the offense was clearly not the sentencing court's only consideration.

In light of defendant's multiple felony convictions, which occurred while on probation, the court concluded incarceration was necessary. *See State v. Powell*, 400 N.W.2d 562, 565-66 (Iowa 1987) (prior felonies and failure on probation sufficient reason for sentence imposed). The court properly considered the environment to which Martin would return and the unlikelihood of his rehabilitation in such an environment. *State v. Neary*, 470 N.W.2d 27, 29 (Iowa 1991) (possibility of rehabilitation factor in sentencing). In addition, the sentencing court followed the recommendations of the presentence investigation report prepared for Martin. *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989) (presentence investigation report considered in sentencing). The sentencing court correctly concluded, based on the minimal essential factors established under Iowa law, the judgment imposed was warranted.

Notwithstanding, the State argues that the five year sentence imposed for the crime of possession of a firearm as a felon under Count III was illegal because the sentence was required to be doubled under Iowa Code section 124.401(1)(e) (1993). We disagree.

Iowa Code section 124.401 (1)(e) doubles a sentence "otherwise imposed by law" when a defendant is "in immediate possession or control of a firearm while participating in a violation *of this subsection*" (emphasis added). It is clear the legislature intended this enhanced penalty provision to be limited to sentences for drug offenses under section 124.401(1), not non-drug offenses such as possession of a firearm as a felon.

Furthermore, there is nothing in the record to suggest Martin plead guilty to or was sentenced under any count of the trial information for being in immediate possession of a firearm while participating in the crime of possession with intent to deliver. We conclude the sentence imposed for Count III was not illegal.

AFFIRMED.