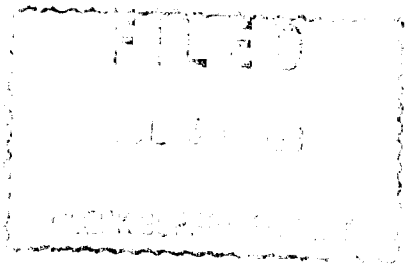
IN THE COURT OF APPEALS OF IOWA

No. 8-378 / 97-2136



STATE OF IOWA,
Appellee,

vs.

KENNETH LAMAR YOUNG,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, John Bauercamper, Judge.

Defendant appeals the sentence imposed upon his conviction of possession of a controlled substance with intent to deliver. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kim Griffith, Assistant County Attorney, for appellee.

Considered by Cady, C.J., and Vogel and Mahan, JJ.

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VOGEL, J.

Kenneth Young appeals the sentence imposed upon his conviction of possession of a controlled substance with intent to deliver. As we find the trial court did not abuse its discretion in imposing sentence, we affirm.

Background facts. In June of 1997, the juvenile court waived jurisdiction of Young, then age sixteen, to district court. Shortly thereafter the State filed three separate trial informations charging Young with thirteen offenses, the most serious of which was possession of a controlled substance with the intent to deliver, under Iowa Code section 124.401(b), a class "B" felony. Approximately twenty rocks of crack cocaine were found on his person at the time he was taken into custody.

Young pleaded guilty to each charge or a lesser-included offense and the State dismissed one count of obstruction of emergency services. The district court accepted Young's guilty plea and sentenced him to a term of imprisonment not to exceed twenty-five years for his conviction of possession of a controlled substance with intent to deliver. Young appeals from this sentence.

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.*

Preservation of Error. Young asserts that error was preserved by filing his notice of appeal, as error preservation is not required to challenge a void sentence.

The State asserts that error was not preserved because the sentence was within the statutory limits and is therefore not void.

The error preservation rule is not applicable to illegal sentences. *State v. McCright*, 569 N.W.2d 605, 608 (Iowa 1997). An illegal sentence is one not authorized by statute and is therefore void. *Id.*

A review of Young's appeal reveals no contention that the sentence was in some way illegal and hence void. Instead, Young simply argues that the trial court should not have imposed a twenty-five-year sentence on a sixteen-year-old under the circumstances in this case. However, we reject the State's argument that Young was required to object to the severity of the sentence prior to filing an appeal. We have consistently held that errors during sentencing need not be raised prior to appeal to be preserved for appeal. *See State v. Boltz*, 542 N.W.2d 9, 10 (Iowa App. 1995); *State v. Thomas*, 520 N.W.2d 311, 313 (Iowa App. 1994) ("There is no procedure which allows the defendant to address the court during or after the pronouncement of sentence, and there is no rule which expressly requires the claim of an improper or illegal sentence to be submitted to the trial court prior to an appeal.").

Sentencing. The district court gave Young a sentence which was within the applicable statutory limits. *See* Iowa Code §§ 124.401(b) (1997).[1] When a sentence is within the statutory limits, we interfere only if the court's reasons clearly show an

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[1] A violation of section 124.401(b) carries a penalty of no more than twenty-five years. Iowa Code § 902.9(1)(1997).

abuse of discretion. *See State v. Glenn*, 431 N.W.2d 193, 195 (Iowa App. 1988); *State v. Bragg*, 388 N.W.2d 187, 191 (Iowa App. 1986).

Young argues that the sentence imposed is too severe as most of the crimes he was charged with were "mickey mouse" in nature.[2] However, our task is not to review for the propriety of the charges filed nor to substitute our sentencing preference for the district court. Rather, our limited task is to review the district court's sentencing choice to determine whether the court acted within its discretion and provided support in the record for the sentence imposed. *See Boltz*, 542 N.W.2d at 11. In exercising this 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. *Id.* at 10. Before selecting and imposing sentence the district court considered the nature of each offense, Young's age, his extensive prior record, the numerous prior unsuccessful opportunities for rehabilitation and treatment, the plea agreement, and other background information contained in the presentence investigation report. Upon review of the record and the statements made by trial court at the sentencing hearing, we find no abuse of discretion. We therefore affirm Young's sentence.

AFFIRMED.

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[2] In addition to the class "B" felony charge, Young pled guilty to a charge of Failure to Affix Drug Tax Stamp, a class "D" felony, and the following misdemeanors: Interference with Official Acts, Eluding, Driving While License Denied, Operating without the Owner's Consent, and Domestic Assault.