FILED
DEC 21 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Appellee,)
vs.)
ROBERT JOHN KUKER,)
Appellant.)

Filed December 21, 1978

744
61803

Appeal from Crawford District Court - David J. Blair, Judge.

Defendant appeals sentence imposed after guilty plea to assault with intent to inflict great bodily injury alleging misuse of presentence report and abuse of discretion. - Affirmed.

Philip F. Miller, Des Moines, for Appellant.

Richard C. Turner, Attorney General of Iowa, Raymond Sullins, Assistant Attorney General, and Thomas Eller, Crawford County Attorney, for Appellee.

Submitted to Oxberger, C. J., and Donielson, Snell and Carter, JJ.

PER CURIAM

Defendant Robert Kuker appeals sentence imposed following plea of guilty to assault with intent to inflict great bodily injury in violation of § 694.6, The Code 1977, alleging denial of a fair sentencing hearing and abuse of discretion in imposition of maximum sentence. We affirm.

Following defendant's guilty plea, trial court ordered a presentence report and the same was made available to defense counsel. A second report, which contained summaries of interviews with the assault victim and another woman who had allegedly been raped previously by defendant, was also submitted to the court. At sentencing hearing, trial court released the second report to both attorneys and announced that no consideration would be given to any material in the presentence investigation which dealt with the alleged prior sexual offense. Defendant neither challenged the accuracy of the presentence report nor requested that trial court disregard any portion thereof. Nevertheless, defendant argues he was denied a fair sentencing hearing because of the improper material contained in the report. He asserts trial court should have ordered a reevaluation and should have personally withdrawn from the case. This contention is without merit. In the absence of evidence to the contrary we assume trial court properly used the presentence report. State v. Dee, 218 N.W.2d 561, 563 (Iowa 1974). There is no evidence to the contrary in the instant case.

Defendant also complains trial court abused its discretion in sentencing him to imprisonment at Anamosa for a term not exceeding one year. The sentence imposed is within the statutory limit and the record discloses no abuse of discretion. State v. Hutchison, 243 N.W.2d 560, 562 (Iowa 1976).

AFFIRMED.