FILED
OCT 21 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed October 21, 1980

vs.)

SCOT LANDALS,) 0-292
64225

Defendant-Appellant,)

Appeal from Boone District Court - Paul E. Hellwege, Judge.

Defendant appeals the maximum sentence imposed pursuant to section 903.1(1), The Code, after pleading guilty to a charge of assault with intent to inflict serious injury in violation of sections 708.1 and 708.2(1), The Code, an aggravated misdemeanor. - Remanded.

Mark W. Lindholm, Ames, for defendant-appellant.

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

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

PER CURIAM

Defendant, Scot Landals, appeals the maximum "not more than two-year" sentence imposed upon a guilty plea to a charge of assault with intent to inflict serious injury, an aggravated misdemeanor. We remand for resentencing.

Landals participated in an assault upon one David Ridler during a drug sale dispute. The victim was threatened with a shotgun, which was fired without shot, beaten with a club on his head which was protected by a motorcycle helmet and tied around the arms and neck with a rope. At the guilty-plea hearing, Landal expressed his desire for probation and stated this was a reason he pleaded guilty to a lesser charge. No sentencing promises resulted from plea bargaining. A presentence investigation report was ordered and the judge advised Landals that in the end analysis the sentencing would be at the discretion of the court. The same judge presided at the sentencing hearing when Landals sought a suspended sentence and counselling help. This was also the recommendation in the presentence report. The judge pronounced sentence of two years to be spent at Anamosa, the maximum sentence for an aggravated misdemeanor. During sentencing the judge noted the victim's age, Landals' use of a gun and club and his merciless behavior when the assault occurred. He also noted his examination of the presentence report. Landals appeals the sentence and asserts abuse of discretion on the judge's part. State v. Hildebrand, 280 N.W.2d 393 (Iowa 1979) is the controlling case in sentencing discretion pursuant to section 901.5, The Code 1979.

Landals asserts the judge's reasons for selecting the particular sentence were impermissible in that they showed an avowed inflexible sentencing policy toward gun-involved crimes such as criticized in Hildebrand. We disagree. The other factors noted on the record are well within a judge's discretion to consider. There is nothing to show that imposition of the maximum sentence would always follow a gun-involved crime absent other factors. Therefore we find no abuse of discretion in the maximum sentence imposed.

However, in the sentencing order filed on September 7, 1979, the term is "not to exceed" two years. Indeterminate sentences do not apply to misdemeanors. § 902.3, The Code 1979. Upon convictions of misdemeanors ". . . the court shall determine the sentence and shall fix the period. . ." § 903.1, The Code. A sentence imposing indefinite

incarceration for a misdemeanor is void. State v. Welfort, 238 N.W.2d 781, 782 (Iowa 1976). Therefore, we remand for a term certain to be set in the sentencing order.

REMANDED.