

IN THE COURT OF APPEALS OF IOWA

No. 9-180 / 98-0750

FILED

STATE OF IOWA,
Appellee,

vs.

EDWARD HERMAN SMITH,
Appellant.

Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge.

Edward Smith appeals the sentence imposed by the district court contending the court abused its discretion in sentencing him to a prison term without allowing him to detoxify from heroin addiction. **AFFIRMED.**

John O. Moeller, Davenport, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, William E. Davis, County Attorney, and Donald Frank, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Streit and Zimmer, JJ.

STREIT, J.

Edward Smith appeals the sentence imposed by the district court contending the court abused its discretion in sentencing him to a prison term without allowing him to detoxify from heroin addiction. Because we find the sentence imposed was not cruel and unusual and the trial court did not abuse its discretion, we affirm.

Smith pled guilty to possession of heroin with intent to deliver in violation of Iowa Code section 204.401(1)(c)(1997). He was sentenced to a term of imprisonment not to exceed ten years. The court waived the minimum sentence based on Smith's age and need for flexibility to continue physical rehabilitation needed due to a stroke.

Smith is sixty-three years old. He has an extensive criminal record, several of the offenses are drug related. He has served four prior prison sentences. He has been a heroin addict for approximately ten years. He has suffered a stroke and, as a result, has limited physical abilities. Approximately three weeks prior to his guilty plea, Smith entered an inpatient treatment program for his heroin addiction. As part of his treatment, he received daily doses of the drug methadone.

Smith's treatment supervisor testified at sentencing that if Smith was sentenced to prison and not provided methadone, he would endure excruciating and potentially life-threatening pain. He advised the inpatient treatment center was willing to keep Smith in order to detoxify him.

Smith argues his punishment is cruel and unusual in light of his age, his physical condition, and the fact he would not be allowed to detoxify from his heroin

addiction in prison. Smith's claim, in effect, is his sentence violates the Eighth amendment of the U.S. Constitution. Our review of constitutional claims is de novo. *State v. Lara*, 580 N.W.2d 783, 784 (Iowa 1998).

The Eighth Amendment states: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. U.S. Const. amend. XIII. The final clause prohibits sentences disproportionate to the crime committed. *Id.*

A court's proportionality analysis should be guided by the following criteria: (1) the gravity of the offense and harshness of the penalty; (2) the sentences imposed on other criminals in the same jurisdiction; and (3) the sentences imposed for the commission of the same crime in other jurisdictions. *State v. Hoskins*, 586 N.W.2d 707, 709 (Iowa 1998)(citation omitted). Use of the proportionality criteria has been limited to the rare case when a threshold comparison of the crime committed to the sentence imposed leads to an inference of gross disproportionality. *See id.* (citing *Harmelin v. Michigan*, 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991)).

The case at hand is not the rare case where a proportionality analysis is available. Thus, our only factor of consideration is whether the punishment was cruel and unusual. *See Hoskins*, We find it was not. Smith failed to offer any evidence as to why his particular medical needs could not be addressed by the medical staff within the prison system. We have reviewed the nature Smith's offense, his age, his extensive prior criminal record, the numerous prior unsuccessful attempts of

rehabilitation and treatment, the plea agreement, and other background information contained in the presentence investigation report in reaching this conclusion.

Further, we are mindful it is not our task to substitute our sentencing preference for the district court. *See State v. Boltz*, 542 N.W.2d 9, 11 (1995). The district court gave Smith a sentence which was within the applicable statutory limits. *See Iowa Code §§ 124.401(c)* (1997). When a sentence is within the statutory limits, we interfere only if the court's reasons clearly show an 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). 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. *State v. August*, 589 N.W.2d 740, 744 (Iowa 1999). Upon review of the record and the statements made by trial court at the sentencing hearing, we find no abuse of discretion. We affirm Smith's sentence.

AFFIRMED.

No. 98-0750. {9-180} STATE v. SMITH

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AFFIRMED. Considered by Huitink, P.J., and Striet and Zimmer, JJ. Opinion by
Streit, J. (4 pages \$1.60)

Edward Smith appeals the sentence imposed by the district court *contending* the court abused its discretion in sentencing him to a prison term *without allowing* him to detoxify from heroin addiction. Smith's claim, in effect, is his sentence violates the Eighth amendment of the U.S. Constitution against cruel and unusual punishments inflicted. We find it was not.