

IN THE COURT OF APPEALS OF IOWA

No. 6-621 / 95-2073

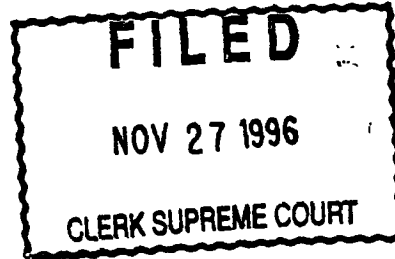
STATE OF IOWA,

Plaintiff-Appellee,

vs.

STEVEN EDWARD GOLDIN,

Defendant-Appellant.



Appeal from the Iowa District Court for Linn County, William R. Eads, Judge.

Steven Goldin appeals his sentences for two counts of first-degree theft, one count of second-degree theft, one count of conspiracy to commit second-degree theft, and eleven counts of bribery. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, and Denver Dillard, County Attorney, for appellee.

Considered by Habhab, P.J., and Huitink and Vogel, JJ.

PER CURIAM

This is an appeal by a defendant claiming the court abused its discretion in sentencing him after he pled guilty to two counts of first-degree theft, one count of second-degree theft, one count of conspiracy to commit second-degree theft, and eleven counts of bribery. We affirm.

Steven Goldin sold chemical products to the City of Cedar Rapids. Over several years, he overcharged the City for products, misrepresented the chemical composition of the products, and sometimes charged the City for products never delivered. In addition, he bribed five City employees in order to keep doing business with the City. On January 5, 1995, Goldin pled guilty to the fifteen criminal charges against him.

Goldin was sentenced on November 2, 1995. The State recommended a term of imprisonment not to exceed fifteen years. The pre-sentence investigation report recommended a term of ten years. Goldin asked for probation. He had formerly been the mayor of Lisbon, Iowa, and many people testified or sent letters on his behalf citing the goods deeds he had done for that city.

The district court sentenced Goldin to consecutive five year sentences on eight of the bribery offenses, for a total not to exceed forty years. The sentences on the other counts are to run concurrently with the other sentences. The district court gave the following reasons for the sentence: (1) to act as a deterrent to defendant and

others against similar offenses; (2) defendant was involved in repeated offenses over a period of time; and (3) defendant involved other people in his crimes.

Goldin has appealed his sentences for these crimes. He contends the district court abused its discretion. He believes the court did not give proper weight to the mitigating factors of his civic involvement in Lisbon. He also believes the court improperly gave vent to his personal feelings. The court stated:

This crime has put a blot on the City government of Cedar Rapids and generally on the City itself. We think of ourselves as a high-class city with a good reputation, not only in the state but in the country. We have generally been free of corruption except for some small matters. This sort of enormity of this offense is what makes the blot on our city. A severe sentence in this case hopefully will keep the city free of such conduct in the future.

As long as a sentence is within the statutory maximum, we will not reverse absent an abuse of discretion. *State v. Floyd*, 466 N.W.2d 919, 924 (Iowa App. 1990). A defendant must show that the discretion was exercised on grounds clearly untenable or to an extent clearly unreasonable. *Id.* Goldin could have been sentenced to up to eighty-five years for these crimes. Because the sentences given in this case were within the statutory maximum, Goldin must show an abuse of discretion.

We find no abuse of discretion under the facts of this case. The court gave valid reasons for imposing the sentences. We affirm the decision of the district court. Costs of this appeal are assessed to Goldin.

AFFIRMED.

Habhab, P.J., and Huitink, J., concur; Vogel, J., dissents.

VOGEL, J. (dissenting)

I respectfully dissent.

The court abused its discretion in sentencing the defendant for decades beyond the presentence investigation recommendation of ten years and the prosecution's recommendation of fifteen years. The abuse of discretion does not stem from the actual length of the sentence but rather that the sentence was based in part by personal rather than impartial reasons.

While the imposition of sentences is within the district court's discretionary power, such discretion is not unlimited. *State v. Black*, 324 N.W.2d 313, 315 (Iowa 1982); *State v. Messer*, 306 N.W.2d 731, 732 (Iowa 1981). The district court did not give impartial reasons to support the sentence imposed. These statements, given prior to the court pronouncing Goldin's sentence, reflect the court's personal feelings regarding the City of Cedar Rapids:

We think of *ourselves* as a high class city *We* have generally been free of corruption This sort of enormity of this offense is what makes a blot on *our* city.

(Emphasis added.) Such statements do not reflect a neutral and detached decisionmaker and demonstrate the court viewed defendant's actions as a personal affront. The judge was speaking as a part of the aggrieved victim, the City of Cedar Rapids. These comments made by the district court amounted to an impermissible sentencing factor, which is considered an abuse of discretion. *State v. Thomas*, 520 N.W.2d 311, 313 (Iowa App. 1994).

I would remand for resentencing.