IN THE COURT OF APPEALS OF IOWA

No. 0-531 / 99-1634
Filed September 27, 2000

FILED
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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMES LEROY GAMBS,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Thomas L. Koehler and Patrick R. Grady, Judges.

Defendant appeals from the sentence entered upon guilty plea to second-degree arson. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Denise A. Timmins, Assistant Attorney General, and Patrick White, County Attorney, for appellee.

Considered by Sackett, C.J., and Streit and Vaitheswaran, JJ.

VAITHESWARAN, J.

James Leroy Gambs pled guilty to second-degree arson and was sentenced to an indeterminate term not to exceed ten years. The sole issue on appeal is whether the district court abused its discretion in sentencing him to prison, in light of diagnoses of mental retardation and mental illness. We affirm.

I. Background Facts and Proceedings

Twenty-four year old Gambs had a history of institutional placements after leaving school in approximately tenth grade. His placements were based on diagnoses of borderline mental retardation and other mental problems, as well as convictions for reckless use of fire and third-degree arson. In 1998, a Woodbury County hospital referee transferred him to a supervised living unit in Iowa City, where he set fire to a mattress. The State charged Gambs with first degree arson. Following a mental health evaluation, the court found him competent to stand trial and denied his pre-sentence request to be placed in a mental health facility.

Gambs pled guilty to second-degree arson. Sentencing was postponed in part to obtain additional documents relating to Gambs's mental history. Those documents were provided to the sentencing court and became a confidential part of the sentencing record. The court also received a presentence investigation report and victim impact statement. The person authoring the latter recommended Gambs be confined to a psychiatric facility rather than prison. The court sentenced Gambs to a prison term not to exceed ten years. This appeal followed.

II. Sentencing Decision

When a challenged sentence falls within statutory limits, our review is for abuse of discretion. *State v. Cooley*, 587 N.W.2d 752, 754 (Iowa 1998). A district court should weigh all pertinent matters, including "the nature of the offense, the attending circumstances, defendant's age, character and propensities and chances of . . . reform." *Id.* at 754-55 (quoting *State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979)).

Gambs contends the district court did not properly consider his mental state in sentencing him. We disagree. The court initially acknowledged Gamb's mental difficulties by agreeing with defense counsel's assessment of the limited placement options for mentally retarded persons. The court stated:

> [T]hose persons that we as citizens have voted into office in Des Moines have made the decision through their budgets that people with disabilities such as Mr. Gambs and problems such as Mr. Gambs are not to be treated anywhere else but prison.

The court then noted that, given Gambs's history, he was "a threat to the community" and there was a likelihood of "a repeat offense". The court concluded a prison placement would assure the court no one would get hurt, and added, "hopefully [prison officials] will be motivated to provide some programming for you, or they may make the determination that they should approach the Court for relief under Chapter 229 [hospitalization of persons with mental illness]."

The sentencing transcript therefore reveals the court weighed Gambs's mental status against the threat he posed to the community and reached a

considered decision that prison was the most viable option. We find no abuse of discretion and accordingly affirm the sentence.

AFFIRMED.