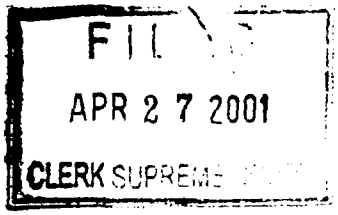
IN THE COURT OF APPEALS OF IOWA

No. 00-952 / 01-126
Filed April 27, 2001



STATE OF IOWA,
Plaintiff-Appellee,

v.

BRIDGETT REGINA SISK,
Defendant-Appellant.

Appeal form the Iowa District Court for Black Hawk County, J.G. Johnson, District Associate Judge.

Defendant-Appellant, Bridgett Sisk, appeals from the sentence imposed by the trial court following a written guilty plea. **SENTENCE VACATED AND REMANDED FOR RESENTENCING.**

Linda Del Gallo, State Appellate Defender, and Tricia A. Johnston, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Sue Swan, Assistant County Attorney, for appellee.

Considered by Hayden, and R. Peterson, and Honsell, Senior Judges*

*Senior judge assigned by order pursuant to Iowa Code Section 602.9206 (2001).

HONSELL, S.J.

Bridgett Regina Sisk appeals following her written guilty plea, judgment and sentence to the charge of driving while barred in violation of Iowa Code section 321.561 (1999). She asserts that at the sentencing proceeding she was denied her right of allocution.

I. Background Facts and Proceedings.

On April 11, 2000 Sisk entered a written guilty plea to the criminal offense of driving while barred as a habitual offender. On May 15, 2000 she appeared in court for sentencing. At that time the court also considered two other criminal cases in which Sisk was accused of violating the terms of probation. Sisk was found to be in contempt of court for violating the terms of probation, and she was sentenced to serve ninety days in the Black Hawk County Jail in each case. The sentences were to be served concurrently. Her probation in each case was continued.

In the present case she was sentenced to confinement in the Black Hawk County Jail for 365 days with all but ninety days suspended. This ninety-day sentence was to be served consecutively to those imposed for violating the terms of her probation in the other cases. The incarceration was to be served in a residential facility.

During the sentencing proceeding the court discussed with counsel for both the State and defendant: the State's recommendations, defense counsel's recommendations made on behalf or defendant and that the court was thinking of consecutive sentences. A recess was taken so that defense counsel could confer with defendant prior to imposition of sentence. After the recess counsel

for both sides addressed the court concerning the recommendations, and the court then imposed the sentences alluded to above. After imposition of sentence the court advised Sisk that she had a right to address the court with regard to the sentence and asked her if there was anything she wanted to say, to which she responded, "No."

II. Standard and Scope of Review.

The standard of review in this case is for errors at law. Iowa R. App. P. 4. The scope of review for defects in a sentencing procedure is for an abuse of discretion by the sentencing court. *State v. Millsap,* 547 N.W.2d 8, 10 (Iowa Ct. App. 1996).

In *State v. Craig,* 562 N.W.2d 633, 634 (Iowa 1997) the court states: "Our review of sentencing procedures is for an abuse of discretion." Such abuse will only be found if the district court's discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Id.* We have recognized that a sentencing court is not required to use any particular language to satisfy rule 22(3)(d). *See id.* at 635. Substantial compliance with the rule is sufficient. *Id.* Substantial compliance is achieved as long as the district court provides the defendant with an opportunity to volunteer any information helpful to the defendant's cause. *Id.; State v. Duckworth*, 597 N.W.2d 799, 800 (Iowa 1999).

III. Merits.

Iowa Rule of Criminal Procedure 22 (3) (d) states:

> Judgment entered. If no sufficient cause is shown why judgment should not be pronounced, and none appears to the court upon the record, judgment shall be rendered. *Prior to such rendition,*

> *counsel for the defendant, and the defendant personally, shall be allowed to address the court where either wishes to make a statement in mitigation of punishment.* In every case the court shall include in the judgment entry the number of the particular section of the Code under which the defendant is sentenced. The court shall state on the record its reason for selecting the particular sentence. (Emphasis added.)

As stated above the substantial compliance test is met when the defendant is provided an opportunity to volunteer information helpful to her or his cause. The rule of criminal procedure clearly states that this is to be done prior to imposition of sentence. Being placed in the position of attempting to change the court's mind after the decision is rendered does not satisfy the test. Therefore the sentence imposed in the appealed case is vacated and the case is remanded for resentencing.

SENTENCE VACATED AND REMANDED FOR RESENTENCING.