

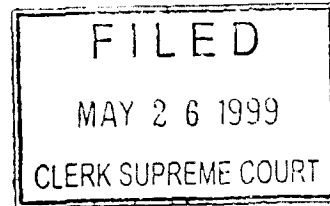
IN THE COURT OF APPEALS OF IOWA

No. 9-177 / 98-659
Filed May 26, 1999

STATE OF IOWA,
Appellee,

vs.

PENNY L. WISELY,
Appellant.



Appeal from the Iowa District Court for Scott County, David E. Schoenthaler,
Judge.

The defendant appeals her sentence entered following her conviction for first
and fourth-degree theft. **AFFIRMED.**

Kent A. Simmons, Davenport, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney
General, William E. Davis, County Attorney, and Robert E. Weinberg, Assistant
County Attorney, for appellee.

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

VOGEL, J.

The defendant-appellant, Penny Wisely, appeals the sentence entered following her guilty plea to first-degree and fourth-degree theft. She argues the district court abused its discretion in sentencing her to a term of imprisonment based solely on the nature of the offense rather than examining all essential factors. We affirm the sentence imposed by the district court.

Background: The State charged Wisely with first-degree theft, fourth-degree theft, and forgery. Wisely opened up three credit card accounts using the business name of her employer and charged personal items to those accounts. She also issued several business checks and forged one of her employers' names. Pursuant to a plea agreement, Wisely entered guilty pleas to first-degree and fourth-degree theft. The State agreed to dismiss the forgery charge at sentencing.

Sentencing proceeding: The presentence investigation report recommended Wisely be given a suspended sentence and placed on probation. The State recommended a term of imprisonment. The district court sentenced Wisely to a term not to exceed ten years for first-degree theft and thirty days for fourth-degree theft, to be served concurrently. In ordering imprisonment rather than a suspended sentence, the district court noted Wisely's actions were not isolated incidents but a deliberate scheme that occurred over sixteen months. The court also cited the magnitude of the offense, deterrence, and the multiple victims.

Following a subsequent restitution hearing, the district court ordered Wisely to pay over \$44,000 to two credit card companies and two former employers. Wisely has appealed both her sentence and the order for restitution. The instant appeal involves only the challenge to her sentence.

Scope of review: We review sentencing decisions for an abuse of discretion. *State v. Garrow*, 480 N.W.2d 256, 259 (Iowa 1992). Sentencing decisions of the trial court are cloaked with a strong presumption in their favor, and an abuse of discretion will not be found unless the defendant shows that such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995). A sentencing court's statement of its reasons satisfies Iowa Rule of Criminal Procedure 22(3)(d) if it recites reasons sufficient to demonstrate the exercise of discretion and indicates those concerns which motivated the court to select the particular sentence it imposed. *Garrow*, 480 N.W.2d at 259; see *State v. Johnson*, 445 N.W.2d 337, 342-43 (Iowa 1989); *State v. Victor*, 310 N.W.2d 201, 205 (Iowa 1981).

Wisely claims the district court abused its discretion in failing to rely on the PSI's recommendation she be given a suspended sentence and placed on probation. She argues the court based its decision solely on the nature of the offense, not on the factors set forth in Iowa Code section 907.5.¹ She notes she is fifty-two years of age

¹ **907.5. Standards for release on probation--written reasons**

Before deferring judgment, deferring sentence, or suspending sentence, the court first shall determine which option, if available, will provide maximum opportunity for the rehabilitation of the defendant and protection of the community from further offenses by the

and has no prior criminal record other than traffic offenses. She claims she obtained new employment with the intent of paying restitution and she and her husband obtained loans against their assets to pay the restitution ordered. Wisely argues probation was the appropriate sentence.²

The court set forth its various considerations in the record. It read the presentence report many times. It heard the statements of counsel and Ms. Wisely. It considered her lack of prior record, the seriousness of the offense, the duration of the offense, the substantial amount of the theft, the number of victims, the effect of the offense on the victims, specific and general deterrence, and rehabilitation for Wisely. Her argument the court based its sentence only on the nature of the offense

defendant and others. In making this determination the court shall consider the age of the defendant; the defendant's prior record of convictions and prior record of deferments of judgment if any; the defendant's employment circumstances; the defendant's family circumstances; the nature of the offense committed; and such other factors as are appropriate. The court shall file a specific written statement of its reasons for and the facts supporting its decision to defer judgment, to defer sentence, or to suspend sentence, and its decision on the length of probation.

² Iowa Code section 901.5 sets forth sentencing procedures:

After receiving and examining all pertinent information, including the presentence investigation report and victim impact statements, if any, the court shall consider the following sentencing options. The court shall determine which of them is authorized by law for the offense, and of the authorized sentences, which of them or which combination of them, in the discretion of the court, will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.

Id.

Wisely cites only the factors set forth in section 907.5, which do not apply unless the court grants a deferred judgment, suspended sentence, or probation.

is without merit. The court clearly considered a variety of factors in exercising its discretion to sentence her to prison. We conclude the court did not abuse its discretion in imposing sentence.

AFFIRMED.