FILED
JAN 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.) Filed January 30, 1981

WALTER DADY,) 0-400
64478

Defendant-Appellant.)

Appeal from Story District Court - Russell J. Hill, Judge.

Defendant appeals sentence imposed after he pleaded guilty to a charge of lascivious acts with a child in violation of section 725.10(1)(3) and (4), The Code 1977. AFFIRMED.

Dale Sharp of Smith, Nutty, Sharp, Ruigh & Benson, Ames, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Thomas N. Martin, Assistant Attorney General, for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant, Walter Dady, appeals the sentence imposed after a guilty plea to a charge of lascivious acts with a child in violation of section 725.10. We affirm.

We will not interfere with a sentence unless trial court erred by reason of failure to follow specific statutory provisions or has abused its discretion. State v. Simpson, 254 Iowa 637, 118 N.W.2d 606 (1962).

I. Defendant alleges the court misread a presentence report and based its decision against probation on a factual error. The court at sentencing addressed the fact that defendant had twice previously been placed on probation, once as a juvenile and once as an adult. Although erroneous, both probations being while defendant was a juvenile, it is the ultimate rationale of the court that supports the decision. Defendant had not benefited by the probationary procedures in the past to justify this sentencing alternative. In addition, the court noted the circumstances and nature of the offense in relation to defendant's past rehabilitative endeavors. We do not find whatever error the trial court made sufficient to show an abuse of discretion. See State v. Killpack, 276 N.W.2d 368, 371 (Iowa 1979).

II. Defendant alleges the court did not follow prescribed statutory procedure for pronouncing sentence pursuant to section 901.5, The Code 1979.[1] Specifically, the defendant asserts the trial court failed to "determine which of [the sentencing options] is authorized by law for the offense." Notwithstanding the fact that this listing of alternatives on the record is not mandated by section 901.5 or Iowa R. Crim. P. 22, we find the court refused to grant, on the record, the only alternative available to defendant—probation as would condition a suspended or deferred sentence. The deferred judgment provisions would be inapplicable because of the nature of the violation. See § 907.3(1)(a), The Code 1979. The court's reasons for imposing the sentence were adequate as shown on the record and as conceded by defendant in his brief.

Finding no error in procedure and no abuse of discretion, we affirm the sentence.

AFFIRMED.

[1] Whether sentencing was pronounced under the new criminal code or under Code of 1977 is an issue raised by the state. In any event, we will adhere to the arguments raised by defendant.