IN THE COURT OF APPEALS OF IOWA

FILED
JUN 29 1982
CLERK, SUPREME COURT

STATE OF IOWA, )
Plaintiff-Appellee, )
vs. )
LEE RONALD BEISSER, )
Defendant-Appellant. )

Filed June 29, 1982

2-163
67007

Appealed from Boone District Court --- M. D. Seiser, Judge.

Defendant appeals the two-year sentence imposed upon his guilty plea conviction of carrying a concealed weapon in violation of section 724.4, The Code. AFFIRMED.

Patrick R. Grady, Assistant Appellate Defender, for defendant-appellant.

Theresa O'Connell Weeg, Assistant Attorney General, for plaintiff-appellee.

Heard en banc.

Defendant appeals the two year sentence imposed upon his guilty plea conviction of carrying a concealed weapon in violation of section 724.4, The Code. We affirm.

In January 1981 the police were called to a private residence where they arrested defendant for public intoxication. Defendant became belligerent and violent at the time of arrest. When defendant was being booked at the police station, the police found a knife in his boot.

In May 1981, the defendant pleaded guilty to a charge of carrying a concealed weapon. The court ordered a presentence investigation report, which indicated that defendant had a long record of both juvenile and adult offenses, most of which were alcohol related.

The trial court sentenced defendant to a prison sentence of two years.

On appeal, the defendant asserts the trial court abused its discretion when it (1) based sentencing, in part, on misinformation in the presentence investigation report regarding defendant's juvenile and adult record, allegations of drug use and violence, and results of prior alcohol abuse treatment; (2) mischaracterized defendant's crime as being assaultive; (3) erroneously assumed defendant would be sent, at the court's direction, to the reformatory rather than the penitentiary; and (4) improperly rejected probation with a condition of inpatient alcohol abuse treatment.

Sentencing is within a trial court's discretion, and if the sentence given to the defendant is within the statutory maximum, it will be set aside only if there is an abuse of discretion. State v. Hildebrand, 280 N.W.2d 393, 396 (Iowa 1979). In its discretion, the court must "consider all pertinent matters in determining proper sentence, including the nature of the offense, the attending circumstances, defendant's age, character and propensities and chances of his reform." Id., quoting State v. Cupples, 260 Iowa 1192, 1197, 152 N.W.2d 277, 280 (1967).

Our review of this case indicates that the trial court did not abuse its discretion in the manner that defendant suggests it did. We look first to the "misinformation" in defendant's presentence investigation report that the trial court allegedly relied upon. We initially note that the trial court never mentioned defendant's juvenile record as a basis for the sentence imposed. Instead, the court focused on defendant's extensive adult criminal record. Neither counsel called the court's attention to the juvenile record in the report, and defendant made no objection to the presence of these juvenile charges being in the report. Aside from the fact that the juvenile charges were in the report, there is no showing that the court considered these juvenile charges in its sentencing decision. On this point, we find no abuse of discretion.

The report made one reference to a counselor's remark that defendant "may be starting to use/abuse other chemicals," and the defendant argues this "misstatement" mislead the trial court. At sentencing the defendant called the court's attention to this statement and indicated that such substance abuse was limited to alcohol. In passing sentence, the court commented that defendant's problems revolved around substance abuse, and specifically noted that the substance was alcohol. The court made absolutely no reference to other drugs. We do not believe the trial court was improperly influenced by the mention of other drug use in the report.

Defendant further asserts that the court relied on misinformation in the report about his violent behavior and the ineffective treatment he received for alcohol abuse. The court merely noted that he had several past convictions of a violent nature and that until "the heat was on," defendant did not seek treatment for his substance abuse problem. The court did not characterize defendant's present crime as "assaultive" in nature. Rather, he was simply noting that in past assaults by defendant, the defendant had used alcohol as an excuse. The court was apparently tying together the fact that defendant had a past record of aggressive

behavior coupled with an alcohol problem. These facts merely indicate the court's rationale for choosing to incarcerate defendant rather than grant him probation. Such a consideration is within the court's discretion and should be noted by the court. See State v. Hildebrand, 280 N.W.2d at 396.

The court's decision to incarcerate the defendant rather than grant him probation conditioned on substance abuse treatment was within its power. The defendant was fully aware of the distinct possibility that he could be sent to the penitentiary, rather than either the reformatory or a substance abuse treatment facility. Defendant was informed of these possibilities during the plea hearing. In the formal judgment entry the defendant was committed into the custody of the Director of Adult Corrections. The men's reformatory was only designated as a reception center for initial processing. The reference by the court to the reformatory as the place of incarceration when sentence was orally pronounced must therefore be deemed to have been unintentional and lacking in significance.

Having found that the trial court did not abuse its sentencing discretion on any of the points urged by defendant, we affirm the conviction.

AFFIRMED.