FILED
OCT 20 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	
MICHAEL SEARCY,	)	8-391 88-13
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Story County (No. CR 12836 & 12837), Albert Habhab, Judge.

Defendant appeals from criminal sentences which followed his guilty plea. **AFFIRMED.**

Lawrence E. Jahn of Smith, Nutty, Sharp, Benson & Jahn, Ames, for defendant-appellant.

Thomas J. Miller, Attorney General; Sheryl A. Soich, Assistant Attorney General; and Brian Humke, Assistant Story County Attorney, for plaintiff-appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

DONIELSON, P.J.

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Following his guilty plea, defendant was sentenced to ten years incarceration for second-degree burglary and two years for assault with intent to commit sexual abuse. The defendant appeals these sentences asserting that the trial court failed to state on the record its reasons for selecting the sentence imposed, as required by Iowa Rule of Criminal Procedure 22(3)(d). He further urges that the trial court abused its discretion in refusing to suspend his sentences.

The defendant pleaded guilty to second-degree burglary and assault with intent to commit sexual abuse, both charges stemming from an incident in which he entered the victim's home at 3:00 a.m. while she was asleep. The trial court sentenced him to the maximum penalties allowed by law: ten years imprisonment for the burglary and two years for the assault with intent to commit sexual abuse.

I. The defendant contends the trial court erred in failing to state on the record its reasons for selecting the particular sentence imposed. The State argues that the trial court adequately complied with rule 22(3)(d) of the Iowa Rules of Criminal Procedure. We agree with the State.

The rule provides that upon entry of judgment, the "court shall state on the record its reason for selecting the particular sentence." Iowa R. Crim. P. 22(3)(d). The main purpose of this requirement is to allow this court to

review the sentence to determine if there has been an abuse of discretion. State v. Matlock, 304 N.W.2d 226, 228 (Iowa 1981). No error will be found where there is a clear indication of the basis for the sentencing decision. State v. Stanley, 344 N.W.2d 564, 568 (Iowa App. 1983).

The record in this case adequately articulates the rationale behind the trial court's sentence. After pronouncing the sentence, the trial court made the following statement on the record:

> The question of probation has been urged by defense counsel; and the Court declines to grant a suspended sentence for the following reasons: first, I have gone over Section 901.5 and 907. -- 907.5. I have reviewed -- I have reviewed all of the pertinent information, including the presentence investigation report and the victim's impact statement, and there is -- as corrected by the record. I have determined that the sentence that I just imposed will provide the maximum opportunity for the rehabilitation of the Defendant and for the protection of the community from further offenses by the Defendant and by others.
>
> I have reviewed the various options available to me as a trial judge and determined that the option just exercised is the one that's more appropriate to the circumstances. I've also considered rather seriously as I sat here and listened to the testimony of the -- those individuals who were called and -- I have considered the -- the standards of release on probation, 907.5, and I'm always brought back to the conclusion that the -- that the act which the Defendant committed, a felony on the one hand and an aggravated misdemeanor on the other hand, is of such dimension that incarceration is called for.
>
> We have not a -- We have more than a single crime. We have two crimes that were committed. I realize that there is some differences in opinion as to what actually took place; but we still come back to the fact that the Defendant pled guilty, not to me, but to a different judge; and in doing

so, he admitted that he committed the acts that he was -- that he pled guilty to.

If you go back to the definition of assault for instance, the Defendant admits to the commission of this act. I realize that he tells a different story than what the victim tells. She has -- He has his presence there to be rather innocent. He has her touching -- She has him touching her and removing or lowering her undergarments on the one hand. And then we come to the Burglary in the Second Degree, which is a serious crime of its own.

* * *

We still yet have the Burglary, which was glossed over. Nonetheless, he is guilty of Burglary in the Second Degree and he's also guilty of Assault with Intent to Commit Sexual Abuse. Perhaps, the victim is -- has suffered and, perhaps, permanently. I don't know; but I do know that under the record he said to Judge Seiser, "I'm guilty of Burglary in the Second Degree," and he said to Judge Seiser, "I'm also guilty of Assault with Intent" -- not just Assault -- he said, "I'm guilty of Assault with Intent to Commit Sexual Abuse." That's what he told the judge, that he assaulted her with the intent to commit sexual abuse; but I don't want the record to -- and I hasten to add for the purpose of the record -- that no injury was inflicted upon -- upon the victim at least insofar as the guilty plea proceedings was concerned because that was part of your plea bargain as I understand it, that everyone at that time was willing to state that she suffered no injury.

And taking all of these facts into consideration, the Court declines to suspend the sentence and does commit the Defendant as stated during the course of the sentencing -- sentencing process. (emphasis added).

This rather lengthy statement indicates that the court considered many relevant factors. The primary basis for the decision clearly was the nature of the acts to which the defendant pleaded guilty. Rule 22(3)(d) does not

require that a sentencing judge's reasons be any more specific. Stanley, 344 N.W.2d at 568 (citing State v. Victor, 310 N.W.2d 201, 205 (Iowa 1981)) (rule 22 was satisfied by the judge's statement which indicated the reason for confinement was the nature of the offense). We find no error.

II. The second alleged error is that the trial court abused its discretion in sentencing the defendant to the maximum period of incarceration allowed under Iowa law. The State argues there was no abuse in discretion in sentencing the defendant to statutorily permissible sentences for burglary and assault with intent to commit sexual abuse.

We interfere in discretionary sentencing only if there has been an abuse of discretion. State v. Stanley, 344 N.W.2d 564, 567 (Iowa App. 1983). No abuse will be found unless the defendant shows that such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. Id.

Guidance for the trial court is provided in Iowa Code section 901.5 (1987). After receiving and examining all pertinent information, the court is to consider the list of sentencing options. Id. "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 . . . ." Id.

The maximum sentence for burglary in the second degree is ten years. Iowa Code § 713.5; 902.9(3) (1987). The maximum sentence for the aggravated misdemeanor of assault with intent to commit sexual abuse is two years. Id. §§ 709.11; 903.1(2). The sentences given were authorized by law.

Defendant contends that the trial court did not consider all the relevant factors based on the reasons reflected in the record. He also contends that the trial court did not give the factors their appropriate weight.

The court is required to make each sentencing decision on an individual basis with no one factor determinative. State v. Ramirez, 400 N.W.2d 586, 590 (Iowa 1987). As long as the factors used are proper sentencing objectives, no abuse will be found. Id. The court is not required to state every relevant factor; however, the sentence announced must fit the defendant and the circumstances. Id.

The transcript quoted previously shows the court considered "all pertinent information, including the presentence investigation report and the victim's impact statement." The court stated that the sentence would provide the maximum opportunity for the rehabilitation of

the defendant and for the protection of the community from further offenses. Also, the sentence was chosen as being more appropriate to the circumstances and to the nature of the offenses.

Both crimes in this case are dangerous to society. Entering a woman's apartment through a window at 3:00 a.m. is serious by itself. Add to that touching the victim, who was sleeping and dressed in her underwear, with the intent to commit sexual abuse, and the situation is potentially one of the more damaging types of violence a person can endure.

Furthermore, defendant had a prior record of a deferred judgment for theft and juvenile theft. The probation officer recommended incarceration and the offense was alcohol related. This information was in the record. It cannot be said that the court did not consider this evidence or that the sentence was based on a single factor alone.

The decisions of the trial court are cloaked with a strong presumption in their favor, and until the contrary appears, the presumption is that the discretion of the trial court was rightfully exercised. Stanley, 344 N.W.2d at 568. There must be an affirmative showing of abuse to overcome this presumption. Id. Defendant has not shown that the trial court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly

unreasonable. Therefore, we find no abuse of discretion and affirm the sentences of the district court.

AFFIRMED.