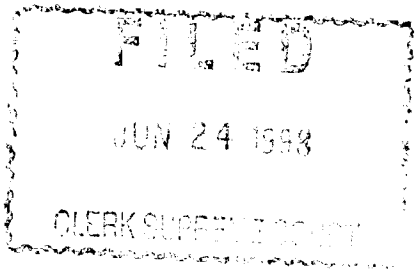
IN THE COURT OF APPEALS OF IOWA

No. 8-225 / 97-1479
Filed June 24, 1998

STATE OF IOWA,
Appellee,

vs.

NICHOLAS P. EDWARDS,
Appellant.



Appeal from the Iowa District Court for Scott County, Max R. Werling (guilty plea) and Edward B. deSilva (sentencing), Judges.

Nicholas Edwards appeals from the sentence imposed upon his guilty plea to failure to appear in violation of Iowa Code section 811.2(8) (1997). **AFFIRMED.**

David R. Treimer, Davenport, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, William E. Davis, County Attorney, and Julie A. Walton, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Huitink and Streit, JJ.

HUITINK, J.

Edwards appeals from judgment and sentence imposed following his guilty plea to failure to appear in violation of Iowa Code section 811.2(8) (1997). We affirm.

I. Background Facts and Proceedings.

Edwards was originally charged with two counts of sexual abuse in the third degree. Edwards subsequently failed to appear for trial. As a result, he was charged with failure to appear in violation of Iowa Code section 811.2(8).

The State agreed to dismiss the sexual abuse counts in exchange for Edwards' guilty plea to the failure to appear charge. At Edwards' sentencing hearing following his guilty plea, the prosecutor recommended incarceration. The defendant requested a deferred judgment or a suspended sentence citing 181 days already served and his personal and family situation as factors mitigating punishment.

At the sentencing hearing the district court stated:

> Well, of course, this all confuses me a little bit. We are sentencing him for a failing to appear at the trial and now we are going to go ahead and dismiss the causes of action that were present at the time of the trial. Apparently . . . there was evidence to go forward on two extremely serious charges against this defendant and now apparently they have gone away. I obviously don't think under the circumstances of this case that the defendant is entitled to a deferred judgment, and I'm not going to give him a deferred judgment, although the record does appear from the State that he would be entitled to it if the court saw fit . . . .
>
> . . . .

> He didn't intend to come back, and I think I have to consider that, and I do consider the fact that he had run and, I guess according to what I find out, he's running from nothing . . . . But I have considered the information offered relevant to the question of sentencing and find that the defendant is guilty . . . .

The district court sentenced Edwards to an indeterminate five-year prison term. The court stated reasons for the sentence selected were:

> The sentence in this matter is based on the fact that the defendant did run from the jurisdiction of this Court, that the charges he was facing at the time were, in fact, serious, and that the failing to appear is a Class D felony. That at this point, I also would acknowledge receipt of the presentence investigations and I will place them in the file.

Edwards appeals. He argues the district court abused its sentencing discretion by failing to impose either a deferred or suspended sentence with appropriate probation terms. Edwards also argues he should be resentenced because the district court failed to state adequate reasons for the sentence imposed.

II. Standard of Review.

We interfere in discretionary sentencing only upon a showing of an abuse of discretion. *State v. Thomas*, 520 N.W.2d 311, 313 (Iowa App. 1994). An abuse of discretion will be found only when the discretion is exercised on grounds which are clearly untenable or to an extent clearly unreasonable. *Id.* (citations omitted).

III. The Merits.

The determination of an appropriate discretionary sentence requires the actual exercise of the district court's sentencing discretion. *State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979). A sentencing court must consider all pertinent facts

circumstances in determining an appropriate sentence. *Id.* The minimal essential factors the court must consider include the nature of the offense, its attending circumstances, the defendant's, age, character, propensity, and chances for reform. *State v. Hildebrand,* at 396.

The nature of the offense alone cannot be determinative of a discretionary sentence. *State v. McKeever*, 276 N.W.2d 385, 387 (Iowa 1979). It is an abuse of discretion to impose a severe sentence for a lesser crime because the defendant was charged with a higher crime unless the facts before the court show the defendant committed the higher crime. *State v. Thompson*, 275 N.W.2d 370, 372 (Iowa 1979).

Iowa Rule of Criminal Procedure 22(3)(d) provides that a sentencing court must state on the record its reasons for imposing a particular sentence. A sentencing court's statement of its reason satisfies the rule if it recites reasons sufficient to demonstrate the exercise of discretion and indicates those reasons which motivated the court to select the sentence imposed. *State v. Johnson*, 445 N.W.2d 337, 342-43 (Iowa 1989). Even a succinct or terse statement of reasons will suffice. *Id.*

We find the district court's statement of reasons for the sentence selected sufficient for purposes of our review. Our perception of the sentencing court's concern motivating its sentencing decision as well as the factors considered is enhanced by a review of the entire sentencing record. *See State v. Boltz*, 542 N.W.2d 9, 11 (Iowa App. 1995) (citing *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989)(the entire record is considered in reviewing sufficiency of reasons for

sentencing). The record includes evidence of all of the essential sentencing factors cited earlier. The State's justification for requesting a prison sentence is clearly explained. The factors Edwards relied on in mitigation of the punishment are also part of the record. The court's stated reasons for the sentence imposed are not insufficient because each mitigating factor Edwards cited was not addressed. *State v. Boltz*, 542 N.W.2d at 11 (citations omitted).

The sentence imposed was within the permissible range of punishment for the offense charged. Contrary to Edwards' contentions, the record does not indicate the court expressly or by implication relied unduly the severity of the dismissed charges in selection of the sentence imposed. We find no abuse of discretion and accordingly affirm.

AFFIRMED.