FILED
AUG 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

435

STATE OF IOWA,)

Plaintiff-Appellee,) Filed August 29, 1985

vs.)

THOMAS LEON CAUDLE,) 5-248
84-1717

Defendant-Appellant.)

Appeal from the Iowa District Court for Scott County - Margaret S. Briles, Judge.

Defendant appeals from a sentence imposed following his conviction of second offense of operating a motor vehicle while intoxicated in violation of Iowa Code section 321.281. AFFIRMED.

Charles L. Harrington, Appellate Defender, and Raymond E. Rogers, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Mickey W. Greene, Assistant Attorney General, for plaintiff-appellee.

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

Defendant appeals from a sentence imposed following his conviction of second offense of operating a motor vehicle while intoxicated in violation of Iowa Code section 321.281. He asserts that the district court failed to state proper and adequate reasons for selecting the sentence imposed. We affirm.

Thomas Caudle was charged by trial information with one count of third offense of operating a motor vehicle while intoxicated in violation of Iowa Code section 321.281 and with one count of driving under suspension in violation of Iowa Code section 321B.38. Pursuant to a plea agreement, defendant pled guilty to third offense of operating a motor vehicle while intoxicated. After the district court granted defendant's motion in arrest of judgment and vacated his initial guilty plea, defendant pled guilty under the plea agreement to second offense of operating a motor vehicle while intoxicated.

Defendant waived time for sentencing and the court sentenced defendant to a prison term not to exceed two years. At the sentencing proceeding the court stated no reasons for the sentence imposed.

The written judgment entry provided that "the court has considered all available sentencing options and determined that the following sentence 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." The court further noted that, "sentence is based on facts and reasoning in report of presentence investigation. Facts are the same even if this is technically only a second offense."

The six-page presentence investigation report was prepared after defendant made his initial guilty plea. The report contained defendant's lengthy criminal history. The criminal history included many offenses for substance abuse and included a juvenile adjudication as well as a number of arrests or charges which did not result in convictions. The report further revealed that defendant violated

several stipulations of a previously imposed probation and that he failed to fully participate in substance abuse treatment programs. The report concluded that imprisonment was the only reasonable alternative for the defendant and it recommended his incarceration.

Imposition of a sentence is within the trial court's discretion and will be set aside only when there has been an abuse of discretion or a defect in the sentencing procedure. State v. Wright, 340 N.W.2d 590, 592 (Iowa 1983).

In the instant case, Caudle claims the trial court failed to state proper and adequate reasons for the sentence imposed. We disagree. As the State points out, the facts and reasoning of the presentence investigation provide a clear basis for the sentencing decision and for review of the decision. Thus, the court's statement that it relied on the presentence investigation report is sufficient to satisfy the requirements of Iowa R. Crim. P. 22(3)(d).

Finally, we are unpersuaded by defendant's claim that the court considered impermissible sentencing factors. Although the presentence report contained information which should not be considered, absent some showing to the contrary, this court must assume the trial court made proper use of the report. See State v. Waterman, 217 N.W.2d 621, 623 (Iowa 1974). Of course, it would be improper for the court to consider the defendant's juvenile record or the charges which resulted in no conviction listed on the presentence investigation report considered by the court. However, the record adequately shows the trial court's reason for the sentence imposed and it is clear that the court did not consider those improper references in its sentence.

AFFIRMED.