

IN THE COURT OF APPEALS OF IOWA

FILED

SEP 24 1985

CLERK SUPREME COURT

STATE OF IOWA,

)

411

Plaintiff-Appellee,

)

Filed September 24, 1985

vs.

)

FRANK VINCENT MARTIN,

)

5-442

85-467

Defendant-Appellant.

)

Appeal from the Iowa District Court for Cedar County - David J. Sohr,
Judge.

Defendant appeals his suspended sentence and fine imposed for violation of Iowa Code section 321.281(1)(a), asserting that the trial court erred in finding that it had no authority to give a deferred judgment to a person who previously had been convicted of a felony. **AFFIRMED.**

Stuart P. Werling of Werling Law Office, Tipton, for defendant-appellant.

Thomas J. Miller, Attorney General, and Ann D. Denato, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Snell and Sackett, JJ.

Defendant Martin entered a guilty plea to the charge of operating a motor vehicle while intoxicated in violation of Iowa Code section 321.281. This was Martin's first offense under section 321.281 and he requested a deferred judgment pursuant to Iowa Code section 907.

At sentencing, the court stated that Iowa Code section 907.3 makes clear that anyone with a prior felony conviction is not eligible for a deferred judgment. The court concluded that because defendant had a 1964 felony conviction, he did not qualify for a deferred judgment. The court further stated, however, that it would have granted a deferred judgment if it had the authority under Iowa Code section 907.3. The court sentenced defendant to a suspended 48-hour jail term and to a fine of \$300.

On appeal, Martin argues that the court has the inherent power to grant a deferred judgment and that considerations of fairness and equity require a deferred judgment in this case.

We will not disturb the sentence imposed by the trial court unless it appears that the court abused its discretion or there was a defect in the sentencing procedure. State v. Wright, 340 N.W.2d 590, 592 (Iowa 1983). The trial court must follow "the relevant sentencing procedure or option that is 'authorized by law for the case under consideration.'" State v. Peterson, 327 N.W.2d 735, 737 (Iowa 1982), citing 4 J. Yeager and R. Carlson, Iowa Practice: Criminal Law and Procedure § 1606 at 352. The Iowa Supreme Court expounded upon this rule in State v. Iowa District Court for Shelby County, 308 N.W.2d 27, 30 (Iowa 1981), stating that "the sentencing process is not the sole province of the judiciary. The legislature possesses the inherent power to prescribe the punishment for crime, and the sentencing authority of the courts is subject to that power."

Iowa Code section 907.3 (1985) provides in pertinent part:

[T]he trial court may, upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, exercise any of the options contained in subsections 1 and 2 of this section. However, this section shall not apply to a forcible felony.

1. With the consent of the defendant, the court may defer judgment and place the defendant on probation upon such conditions as it may require, or defer sentence and assign the defendant to the judicial district department of correctional services. . . .

However, this subsection shall not apply if any of the following is true:

* * *

b. The defendant previously has been convicted of a felony. "Felony" means a conviction in a court of this or any other state or of the United States, of an offense classified as a felony by the law under which the defendant was convicted at the time of the defendant's conviction.

* * *

Under this statutory mandate, the trial court clearly had no authority to grant Martin a deferred sentence because he had a prior felony conviction. We conclude that the trial court did not abuse its discretion, nor was there a defect in the sentencing procedure. Therefore, Martin's sentence is affirmed.

AFFIRMED.