

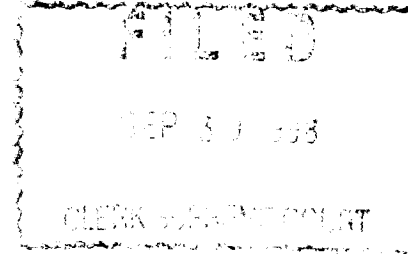
IN THE COURT OF APPEALS OF IOWA

No. 8-377 / 97-2068
Filed September 30, 1998

STATE OF IOWA,
Appellee,

vs.

DENISE LYNN CHAPLIN,
Appellant.



Appeal from the Iowa District Court for Marshall County, Sandra J. Holien,
District Associate Judge.

Denise Lynn Chaplin appeals from the sentence entered upon her guilty plea
to possession of a controlled substance, in violation of Iowa Code section 124.401(5)
(1997). **AFFIRMED.**

Stephen A. Owen of Moon Law Office, Marshalltown, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney
General, James DeTaeye, County Attorney, and Chad R. Frese, Assistant County
Attorney, for appellee.

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

HUITINK, J.

I. Background Facts and Proceedings.

Denise Lynn Chaplin was charged on June 5, 1997, with possession of a controlled substance (marijuana), in violation of Iowa Code section 124.401(5) (1997). Chaplin was offered a plea bargain under which the State would recommend the mandatory minimum fine and fourteen days in jail in exchange for her guilty plea. Chaplin declined the offer.

Chaplin had previously been convicted of a similar possession charge in January 1997, and was on probation at the time of the June 5 charge. The State moved to have her probation revoked. Chaplin had twenty eight days remaining on her sentence for the January conviction. In July 1997, prior to the revocation, the State amended its plea offer on the June 5 charge to include a recommendation the fourteen-day sentence be served concurrently with the twenty eight days. Chaplin accepted the amended plea agreement. Before entering the plea, however, Chaplin's probation was revoked on September 3, 1997. She was released from jail in early October.

Chaplin filed a written guilty plea on September 22, 1997, and was sentenced on November 3. The court noted Chaplin had been charged on two other occasions with possession of a controlled substance within the preceding two years. The court sentenced Chaplin to the mandatory minimum fine of \$250 and a fourteen-day term of incarceration. The court also suspended Chaplin's driver's license for 180 days.

The court found Chaplin could not serve her sentence concurrent with the sentence for the previous charge because it had already been served.

Chaplin appeals. She contends the court abused its discretion in imposing the sentence by considering improper sentencing factors. She complains that, at the sentencing hearing, the State represented to the court, without supporting evidence, a deferred judgment on a prior conviction had been revoked, and Chaplin had previously undergone treatment for substance abuse. She argues the court could not properly rely on these facts, nor could the court rely solely on the nature of the offense in imposing the sentence.

II. Standard of Review.

We review the district court's sentencing decision for an abuse of discretion. *State v. Mai*, 572 N.W.2d 168, 170 (Iowa App. 1997). No abuse of discretion will be found unless the defendant shows that such discretion was exercised for reasons clearly untenable or to an extent clearly unreasonable. *Id.*

III. District Court's Consideration of Sentencing Factors.

Chaplin asserts on appeal that the district court relied upon improper sentencing factors. Reliance upon impermissible sentencing factors constitutes an abuse of discretion. *State v. Thomas*, 520 N.W.2d 311, 313 (Iowa App. 1994).

Chaplin identifies two factors as being impermissible: (1) the district court's consideration of a previous offense as a revoked deferred judgment, and (2) consideration of an "unsubstantiated claim that Chaplin had previously undergone

treatment for substance abuse.” Additionally, Chaplin claims the sentence is improper because the district court “focused entirely on the nature of the instant offense.” We find all three claims to be without merit.

It is well settled that the measure of punishment selected by the district court lies within its sentencing discretion. *State v. Patterson*, 161 N.W.2d 736, 737 (Iowa 1968). The sentencing court’s duty is to consider all available sentencing options, give consideration to all circumstances of a particular case, and to exercise the sentencing option which will best accomplish justice for society and for the defendant. *State v. Robbins*, 257 N.W.2d 63, 70 (Iowa 1977). When a sentence falls within the statutory limits it will only be set aside for an abuse of discretion. *State v. Neary*, 470 N.W.2d 27, 29 (Iowa 1991).

A. *Deferred Judgment.*

We initially turn to Chaplin’s contention the district court improperly considered her November 28, 1995, deferred judgment in determining the sentence for the instant offense. Chaplin claims the district court should not have considered the prosecutor’s statement that the deferred judgment had been revoked because the statement was not supported by the record. The Iowa criminal history report entered into evidence at the sentencing hearing was generated on May 5, 1997, and did not indicate the deferred judgment had been revoked. The deferred judgment apparently was revoked on September 3, 1997, after the criminal history report was generated,

but prior to the sentencing hearing. The Marshall County prosecutor nonetheless brought the revocation to the district court's attention at the sentencing hearing.

The question posed by this appeal is whether a district court judge can consider a deferred judgment entered against a criminal defendant when sentencing the defendant for a subsequent offense. We hold this is a proper circumstance for the sentencing judge to consider. *See State v. Mensah*, 424 N.W.2d 453, 455-56 (Iowa 1988).

Sentencing judges have broad discretion in deciding what to consider in selecting criminal sanctions. *State v. Cole*, 168 N.W.2d 37, 40 (Iowa 1969). Among the factors a sentencing judge can consider is evidence of prior criminal activity, even if not leading to a conviction. *See, e.g., State v. Swartz*, 278 N.W.2d 22, 26 (Iowa 1979)(court properly considered evidence from prior conviction for possession of controlled substance with intent to deliver which was set aside due to illegal search).

In the instant case, Chaplin's recidivism bears directly on her prospect for rehabilitation and deterrence of future offenses. The district court's consideration of Chaplin's 1995 deferred judgment, therefore, was not an abuse of discretion. Because the district court was within its discretion to consider a deferred judgment, we do not address whether the record is sufficient to support a revocation of the deferred judgment at the time of sentencing.

B. Previous Substance Abuse Treatment.

We hold the district court's consideration of Chaplin's previous treatment for substance abuse was not an abuse of discretion. Much of the above analysis is equally applicable here. The record indicates Chaplin had a substance abuse problem. Chaplin's counsel acknowledged as much at the sentencing proceeding. Chaplin's substance abuse problem and the ineffectiveness of her previous treatment are factors indicative of her prospects for successful rehabilitation. Her substance abuse treatment history was therefore a proper consideration for the district court to evaluate in determining the appropriate sentence.

C. The District Court's Basis for Selecting Sentence.

Chaplin asserts the district court improperly focused solely upon the nature of the offense in arriving at the severity of her sentence. She claims the district court gave no weight to "the fact that Ms. Chaplin is employed, married, her age, the fact that no one was injured, nor the fact that she appears to have cooperated at the time of her arrest with law enforcement officers." Her claims are not supported by the record. Initially we note that none of the additional factors Chaplin asserts here on appeal were placed before the district court at the sentencing hearing.

A sentencing court has a duty to consider all the circumstances of a particular case. *State v. Boltz*, 542 N.W.2d 9, 11 (Iowa Ct. App. 1995). The sentencing court, however, is not required to specifically acknowledge each claim of mitigation urged by a defendant. *Id.* Furthermore, the failure to acknowledge a particular sentencing

circumstance does not necessarily mean it was not considered. *Id.* We review the sentence for an abuse of discretion based on the entire record, and look to see if the reasons articulated by the trial court are sufficient to enable us to determine if an abuse of discretion occurred. *See State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989).

Looking at the entire record, we hold the district court did not rely solely upon the nature of the offense in determining Chaplin's sentence. The record indicates the sentencing judge considered Chaplin's previous criminal record, her history of substance abuse, and the failure of substance abuse treatment, all in addition to the nature of the instant offense.

We have considered all three of Chaplin's assigned errors and find them to be without merit. Accordingly, Chaplin's sentence is affirmed.

AFFIRMED.