IN THE COURT OF APPEALS OF IOWA

No. 0-251 / 99-1017
Filed June 14, 2000

FILED
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CLERK SUPREME COURT

STATE OF IOWA,
Appellee,

vs.

JOSHUA EUGENE PROUD,
Appellant.

Appeal from the Iowa District Court for Clinton County, Arlen J. Van Zee Judge.

Joshua Proud appeals following the court's judgment and sentence after a jury trial on the charge of assault causing bodily injury in violation of Iowa Code sections 708.1 and 708.2(2) (1997). **SENTENCE VACATED; REMANDED FOR RESENTENCING.**

Linda Del Gallo, State Appellate Defender, and Martha J. Lucey, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, and Mike E. Wolf, County Attorney, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

VOGEL, P.J.

Joshua Proud appeals following the court's judgment and sentence after a jury trial on the charge of assault causing bodily injury in violation of Iowa Code sections 708.1 and 708.2(2) (1997). Because we find the trial court failed to adequately state the reasons for its sentencing decision, we vacate the sentence and remand for resentencing.

Background facts. The assault charge in this case arose from an incident in which Proud and another individual approached and assaulted the victim, causing him to become unconscious and suffer injuries. Proud caused the majority of the harm by kicking the victim repeatedly in the head while his friend held the victim to the ground. The trial court sentenced Proud to the maximum penalty available, one year in the county jail. Proud now appeals the sentence, alleging the trial court failed to state adequate reasons for the sentence imposed.

Scope of review. A sentence will be disturbed by a reviewing court only upon a showing that the trial court abused its discretion. *State v. Neary,* 470 N.W.2d 27, 29 (Iowa 1991). No abuse of discretion 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.* The purpose of Iowa Rule of Criminal Procedure 22(3)(d), requiring a trial court to state its reasoning for a particular sentence on the record, is to allow a reviewing court to determine whether there has been such an abuse of discretion. *State v. Matlock,* 304 N.W.2d 226, 228 (Iowa 1981). A sentencing court's statement of its reasons

satisfies the rule if it recites reasons sufficient to demonstrate the exercise of discretion and indicates those concerns which motivated the court to select the particular sentence which it imposed. *See State v. Johnson,* 445 N.W.2d 337, 342-43 (Iowa 1989); *State v. Victor,* 310 N.W.2d 201, 205 (Iowa 1981).

Sentence. Proud alleges the trial court abused its discretion by ordering the maximum allowable sentence without stating its reasons for such a determination. The State contends the comments of the trial court, when taken in context, reveal the consideration of several different issues, including Proud's lack of remorse, character, chance for reform, the nature and seriousness of the crime, and the circumstance surrounding the offense. When sentencing Proud to the maximum penalty, the court stated:

> (Pause) Well, Mr. Proud, I really don't know if you have learned much from this experience. And I say that because of - - three weeks ago there was a confrontation - - and not a serious one - - but at least the words would indicate to me that you haven't learned much from this experience.
>
> (Pause) I don't, Mr. Proud, believe that sentences imposed by the Court need to be generated or recommended by the victim. The victim has a right to address the Court, and he did. And I respect that - - comments that he made. But what I do is independent of the victim. The Court imposes a sentence that the Court feels appropriate.
>
> I have thought about this. I have thought about this, actually, quite a bit. I thought about it during the trial as I listened to the testimony; I thought about it later when the verdict was returned; I have thought about it since. And I have felt all along that a jail sentence was appropriate. And I will have to tell you, in all honesty, I felt that a substantial jail sentence was appropriate.
>
> And I think in a case like this that the maximum sentence is appropriate, actually. That's what I've thought all along in this case. And so I am not doing anything out of - - Well, this is certainly nothing that is done in haste. I can assure you of that. I have given

> it a lot of thought. And I truly believe that in this case the Legislature has prescribed the maximum sentence. I think it's called for. I felt so all along.
>
> That is the sentence I am going to impose - - is one year in the Clinton County Jail. Now, you also are going to pay restitution. You will be paying what your share is. And the restitution is $807.02. We have a separate order on that, with the victim's name and address.

"[I]n exercising its discretion, a trial court is to weigh all pertinent matters in determining a proper sentence, including the nature of the offense, the attending circumstances, the defendant's age, character, and propensities or chances for reform." *State v. Johnson,* 476 N.W.2d 330, 335 (Iowa 1991). Iowa Rule of Criminal Procedure 22(3)(d) states, "[t]he court shall state on the record its reasons for selecting the particular sentence." This procedure allows a court of review to determine whether a trial court has abused its discretion in ordering a sentence in the applicable circumstances. *Matlock,* 304 N.W.2d at 228. In this case, the trial court failed to state its reasons for determining why a one-year jail term is appropriate. The reasons purported by the State are simply too general.

It is apparent the court gave the sentence considerable thought and did not choose the sentence lightly. Nonetheless, the court did not sufficiently articulate those thoughts for us to review the court's discretion. It is not enough that we can infer adequate reasons from the facts surrounding the situation. We, therefore, vacate the sentence and remand for resentencing.

SENTENCE VACATED; REMANDED FOR RESENTENCING.