

IN THE COURT OF APPEALS OF IOWA

No. 7-003 / 95-1445

000456

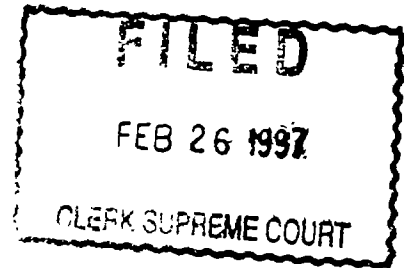
STATE OF IOWA,

Plaintiff-Appellee,

vs.

DeMIKA RUSH,

Defendant-Appellant.



Appeal from the Iowa District Court for Scott County, John A. Nahra (guilty plea) and James E. Kelley (sentencing), Judges.

Defendant appeals the sentence imposed upon his conviction of delivery of a controlled substance. **AFFIRMED.**

Harold J. DeLange, II, Davenport, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, William E. Davis, County Attorney, and Donald Frank and Realff Ottesen, Assistant County Attorneys, for appellee.

Considered by Habhab, C.J., and Cady and Streit, JJ.

PER CURIAM

Defendant, DeMika Rush, appeals the sentence imposed upon his conviction of delivery of a controlled substance in violation of Iowa Code section 124.401(1)(c) (1993). We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Rush pled guilty to the charge of delivery of a controlled substance (cocaine). Pursuant to the plea agreement the parties were free to recommend probation or imprisonment. It was agreed, however, that if imprisonment was imposed the mandatory minimum term would be waived.

At the sentencing hearing Rush requested he be placed on probation or sentenced to a residential correctional facility. The State urged the court to follow the recommendation of the presentence report, that Rush be incarcerated. The court sentenced Rush to a term of imprisonment not to exceed ten years, but withheld the imposition of a mandatory minimum term.

On appeal, Rush asserts the court abused its discretion in sentencing him to a term of incarceration. He argues the sentencing court improperly placed specific deterrence ahead of all other sentencing considerations. He concedes he has a lengthy misdemeanor criminal history, but he argues this is his first felony conviction and he is a good candidate for the education and employment opportunities available in community based corrections.

So long as the sentence imposed is within the statutory maximum we will not interfere absent a showing of an abuse of the sentencing court's discretion. *State v. Buck*, 275 N.W.2d 194, 195 (Iowa 1979). Abuse of discretion is shown only if the court has exercised its discretion on "grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Id.*

In rejecting Rush's request for probation, the sentencing court pointed to Rush's criminal history—which he admits is lengthy, the nature of the offense, deterrence, and protection of the public. We cannot say the sentencing court's discretion was exercised on grounds clearly untenable or unreasonable. There was no abuse of discretion. We affirm the sentence imposed.

AFFIRMED.