IN THE COURT OF APPEALS OF IOWA

No. 0-159 / 99-0682
Filed May 31, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL ALLEN HAGER,
Defendant-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, Patrick R. Grady, Judge.

On appeal following his conviction for first-degree robbery and willful injury, defendant contends the court failed to exercise discretion by failing to consider granting the defendant a deferred judgment pursuant to Iowa Code section 232.8(3) (1997). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Robert P. Ranschau, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Denise A. Timmins, Assistant Attorney General, Denver D. Dillard, County Attorney, and Jerry Vander Sanden, Assistant County Attorney, for appellee.

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

MILLER, J.

Defendant Michael Hager, convicted after trial by jury of robbery in the first degree and willful injury, appeals his sentences, contending the trial court failed to properly exercise the discretion given to it by Iowa Code sections 232.8(3) and 901.5. We affirm.

Briefly stated, a reasonable jury could find the following facts. On May 23, 1998, Hager, age fifteen, was a resident of the ASAC Center in Cedar Rapids, Iowa, a residential center for juvenile delinquents. The facility is not secure. Clients are told if they choose to run, they may and no one will attempt to stop them.

After the residents had gone to bed for the evening, Hager and another juvenile were each allowed out of their rooms to use the restroom. The security officer on duty, Marvin Jackson, asked both to return to their rooms. Hager instead took a metal baseball bat from a nearby athletic bag, and the other juvenile followed suit. Jackson asked them to put the bats down and return to their rooms. Hager then stated the two were going to run. Jackson replied "fine, put the bats down and get your clothes and go. We're not going to stop you. You know the rules." The juveniles refused to put the bats down. Jackson began to feel threatened and picked a board up in order to defend himself if necessary. Jackson repeated his request that they get their clothes and leave. Hager replied they wanted Jackson's car, billfold, and cigarettes. Jackson refused. Hager repeated his demands five or six times, and Jackson refused each time. Feeling the situation had escalated beyond his control, Jackson attempted to go to a nearby desk to call for assistance, but Hager made a

threatening move toward Jackson to stop him. After more refused demands for Jackson's car, wallet, and cigarettes, Hager said "let's take him" and urged the other resident to "beat him until we know he can't get back up, then we'll take what we want." As they began to attack, Jackson attempted to wrestle the bat away from the other juvenile, when Hager hit Jackson over the head from behind. Jackson was unconscious for a few seconds, then tried to get back up, but "[t]he forces from the bat just kept coming, they kept beating me; and finally when I was down, they beat me some more and then kicked me in the head." Jackson was again knocked unconscious. Jackson estimated he was hit with the bats fifteen times, and kicked in the face eight to ten times. The juveniles then took Jackson's car keys, wallet, cigarettes, and money belonging to other residents. Before leaving the facility, the juveniles each enjoyed one of Jackson's cigarettes.

Jackson became conscious once again when he heard his car starting, and called 911. Some adult residents then found him, and help from the adult side of the facility arrived until the emergency medical assistance arrived. As a result of the attack, Jackson suffered neurological damage to his inner ear, resulting in vertigo and the inability to carry on several everyday activities. Blows to his forearm caused permanent nerve damage, resulting in loss of all normal sensation in his left arm.

The juveniles were arrested a short time later at a nearby convenience store. Hager was charged in juvenile court with attempt to commit murder, robbery in the first degree, and willful injury. After hearing, the juvenile court waived jurisdiction. Hager was then charged by trial information with robbery in

the first degree and willful injury. Hager was found guilty after jury trial on both counts. The court sentenced Hager to concurrent terms of twenty-five years for robbery in the first degree and ten years for willful injury. Hager appeals the sentences.

We review the district court's determination not to grant a deferred judgment under Code section 232.8(3) for an abuse of discretion. *State v. Privitt*, 571 N.W.2d 484, 486 (Iowa 1997). An abuse of discretion is found only when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Id.*

As a general rule, the juvenile court has exclusive original jurisdiction in proceedings involving a child alleged to have committed a delinquent act. Iowa Code § 232.8(1)(a) (1997). With respect to juveniles fourteen years of age or older, the juvenile court has the authority to waive jurisdiction so a child may be prosecuted as an adult. Iowa Code §§ 232.8(3), 232.45 (1997). When jurisdiction has been waived and the child has been prosecuted as an adult, the district court may grant a deferred judgment even if the offense otherwise carries a mandatory prison sentence. *See* Iowa Code § 232.8(3) (1997); *State v. Edgington*, 601 N.W.2d 31, 32 (Iowa 1999). Iowa Code section 232.8(3) (1997) provides:

> The juvenile court, after a hearing and in accordance with the provisions of section 232.45, may waive jurisdiction of a child alleged to have committed a public offense so that the child may be prosecuted as an adult for such offense in another court. If the child pleads guilty or is found guilty of a public offense in another court of this state that court may, with the consent of the child, defer judgment and without regard to restrictions placed upon deferred judgments for adults, place the child on probation for a period of not less than one year upon such conditions as it may require. Upon

> fulfillment of the conditions of probation the child shall be discharged without entry of judgment.

Reasoned exercise of discretion is the hallmark of any proper sentencing procedure. *State v. Cooley*, 587 N.W.2d 752, 754 (Iowa 1998). The trial court's sentencing duty has been summarized this way:

> The trial court and we on review should weigh and consider all pertinent matters in determining proper sentence, including the nature of the offense, the attending circumstances, defendant's age, character and propensities and chances [for] reform. The courts owe a duty to the public as much as to defendant in determining a proper sentence. The punishment should fit both the crime and the individual.

State v. Hildebrand, 280 N.W.2d 393, 396 (Iowa 1979). Each sentencing decision must be made on an individual basis, and no single factor alone is determinative. *State v. Johnson*, 513 N.W.2d 717, 719 (Iowa 1994). Iowa Code section 901.5 provides in pertinent part:

> The court shall determine which [sentencing option] is authorized by law for the offense, and of the authorized sentences, which of them or which combination of them, in the discretion of the court, 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.

Iowa Code § 901.5 (1997).

Hager contends the district court failed to properly exercise the sentencing discretion given to it by Iowa Code sections 232.8(3) and 901.5, because it refused to grant a deferred judgment, if not on both felonies then at least on one. More specifically, he argues the trial court failed to give proper weight and consideration to his age at the time of the offenses, his long history of placements in juvenile facilities and treatment programs, the fact the offenses occurred while he was in a residential juvenile facility, and his need for additional

services. Hager contends he should have received a deferred judgment on at least the robbery in the first degree offense, because "to incarcerate a 15 year old for more than 20 years shocks the conscience." (We note the defendant was in fact just three months short of his seventeenth birthday at the time of sentencing. We further note that all of the factors as to which the defendant argues the court failed to give proper weight and consideration, except the defendant's age, can as readily be seen as suggesting judgments should not be deferred as suggesting judgments should be deferred.)

In giving reasons for its sentencing decisions, the district court stated:

> [W]hen I consider the options, what keeps coming back to me is that you had the opportunity to stop and leave and diffuse the situation but instead you just inflicted continual violence upon Mr. Jackson. If you'd left when he gave you the chance, it still would have been first degree robbery, and he wouldn't be hurt so bad.
> * * *
> And then asking for a deferred judgment or for some break might have made some sense. But given what you did doesn't make any sense and doesn't really allow for any mitigation in punishment. You could have killed him. And I know I have the option of giving you a deferred on one or both counts, but . . . given the results, giving you a sentence on just Willful Injury and a deferred on the other one, I don't think you'd be ready to get out when that sentence was burned.
> * * *
> The reasons for the Court's sentences are the nature of the offenses, the Defendant's age, the prior attempts of rehabilitation in the Juvenile Court system and the Court's belief that the sentence is necessary to protect the public.

This statement shows the district court was aware of and considered its options. It shows the court considered the defendant's age, the sustained nature of the attack, the victim's injury and potential for death from the attack, prior attempts to rehabilitate the defendant, the time needed for rehabilitation, and the need to protect the public. The district court acted well within its discretion in

rejecting requests for deferral of judgments, and gave cogent reasons for the sentences it selected. We find no abuse of discretion.

AFFIRMED.