

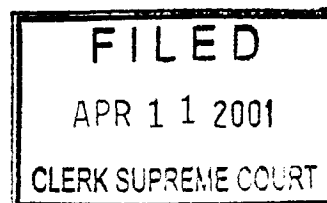
IN THE COURT OF APPEALS OF IOWA

No. 1-079 / 00-218
Filed April 11, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DAMARCIS LATRELL MARCH,
Defendant-Appellant.



Appeal from the Iowa District Court for Scott County, J. Hobart Darbyshire,
Judge.

On appeal from his convictions for operating a motor vehicle without the
owner's consent and eluding a law enforcement vehicle, the defendant argues
the trial court failed to exercise its discretion in imposing a \$500 fine on each
offense. **SENTENCES AFFIRMED IN PART, VACATED IN PART AND
REMANDED FOR RESENTENCING.**

Linda Del Gallo, State Appellate Defender, and Shellie L. Knipfer,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney
General, and William E. Davis, County Attorney, and Michael J. Walton,
Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Hecht and Vaitheswaran, JJ.

VAITHESWARAN, J.

A jury convicted Damarcis March of operating a motor vehicle without the owner's consent and eluding a law enforcement vehicle. Iowa Code §§ 714.7 (1999); 321.279(2) (Supp. 1999). The district court sentenced him to prison terms not to exceed two years on each count, to be served concurrently, and fines of \$500 on each count. On appeal, March contends the sentencing court failed to exercise its discretion to suspend the fines. We agree and, accordingly, vacate the fine portion of the sentence and remand for resentencing.

When a sentencing court has discretion, it must exercise that discretion. *State v. Ayers*, 590 N.W.2d 25, 27 (Iowa 1999). If the court fails to do so, we must remand for resentencing. *Id.* at 33.

March was sentenced pursuant to Iowa Code section 903.1(2), which sets forth a general penalty for aggravated misdemeanors if a penalty is not otherwise provided. This provision states "[t]here shall be a fine of at least five hundred dollars but not to exceed five thousand dollars." Iowa Code § 903.1(2). However, the provision does not eliminate the sentencing court's authority to suspend the fine. See *Ayers*, 590 N.W.2d at 31.

Before March was sentenced, his attorney referred to the fines as mandatory and recommended "just judgments be entered on those." Neither March's attorney nor the State spoke to whether the fine could or should be suspended.

In sentencing March, the court made no reference to whether it believed it had discretion to suspend the fines. The court stated:

There's no question in my mind that the message needs to be sent that you don't lead police on an extended, high-

speed chase. Okay. And, you know, to that extent, I think it does warrant a term of incarceration. The sentence under - - Is there any other reason we shouldn't proceed with sentencing?

Okay. Pursuant to the defendant's conviction under Count I of Operating a Motor Vehicle Without the Consent of the Owner, the defendant is sentenced to serve of term of not to exceed two years. Pursuant to the defendant's conviction under Count II of the Trial Information of Eluding By Speeding in Excess of 25 Miles Per Hour Over the Speed Limit, the defendant is sentenced to serve a term of two years - - or not to exceed two years imprisonment. Those sentences will run concurrently. The designated reception center is the Iowa Medical and Classification Facility at Oakdale.

Defendant will further be ordered to make restitution for court-appointed attorney fees under Count I. Defendant is sentenced - - or is fined the sum of \$500; likewise under Count II, fined the sum of \$500. Judgment will enter on those two fines.

Because the record is silent on whether the sentencing court exercised its discretion concerning suspension of the fines, we are compelled to vacate that portion of the sentence and remand for resentencing. *See State v. Lee*, 561 N.W.2d 353, 355 (Iowa 1997); *State v. Sandifer*, 570 N.W.2d 256, 257-8 (Iowa Ct. App. 1997).

SENTENCES AFFIRMED IN PART, VACATED IN PART AND REMANDED FOR RESENTENCING.

Hecht, J., concurs; Streit, P.J., dissents.

STREIT, P.J. (dissenting)

I respectfully dissent. There has been no showing the court failed to exercise its discretion in imposing the fines. I would affirm the trial court.