

IN THE COURT OF APPEALS OF IOWA

No. 6-807 / 96-1017

000448

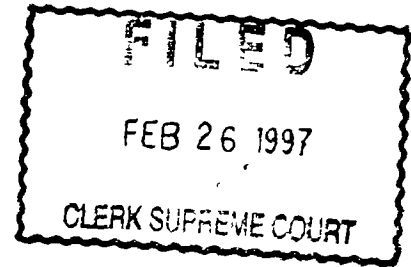
STATE OF IOWA,

Plaintiff-Appellee,

vs.

SHEILA JEAN JORDAN,

Defendant-Appellant.



Appeal from the Iowa District Court for Marshall County, William J. Pattinson, Judge.

Sheila Jordan appeals the sentence imposed upon her conviction of fraudulent use of a lottery ticket. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John P. Messina, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, and James DeTaeye, County Attorney, for appellee.

Considered by Habhab, C.J., Huitink, and Vogel, JJ.

PER CURIAM

Sheila Jordan appeals the sentence imposed upon her conviction of fraudulent use of a lottery ticket. She contends the district court considered unproven charges in imposing sentence. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Sheila Jordan pleaded guilty to fraudulent use of a lottery ticket pursuant to an agreement with the State whereby it agreed to dismiss other counts of the offense and recommend probation. At sentencing the State recommended probation. Jordan's attorney also argued for imposition of probation. The district court, however, ordered Jordan to serve a term of imprisonment not to exceed five years.

In imposing sentence the court stated:

All right. I'll recite as much as I can verbatim as to what I'm going to do here and why. If I overlook one of the sentencing factors that the courts of appeal direct trial courts to consider, it's not that I haven't run that through my mind. It's just that in speaking it may not come into my recollection.

I have considered all the information in this presentence investigation, including descriptions of employment history, *prior arrest record*, current living arrangements, marital status age, etc.

This—this is not an easy situation, I'll be right up front with you. We have a young woman 27 years of age with two children who obviously love and need her, and a husband; but on the other hand this same woman has demonstrated an attitude that I think that the term *scofflaw* is appropriate. Not that any of these particular *simple misdemeanors or traffic charges* or any of that have, individually or even collectively, much weight in the decision, I think it indicates that Ms. Jordan has an attitude that no rules of law basically apply to her unless she decides that's going to be the case.

She's a convicted thief and has done time in prison, having had a probation already revoked. Granted, that was eight years ago; but as

recently as two and a half years ago there was a theft charge, a conviction. Looked like it was charged as third and *dropped down to theft fifth*. It seems to indicate the same attitude that--that the 1988 charge indicates, that is that Ms. Jordan is willing to basically steal from other people for her own ends.

I recognize that the State has recommended a probation, and I recognize that there has been two probations in the past, one successful, one not; but I don't think that probation is appropriate for you at this point

(Emphasis added.)

Jordan appeals. She argues that the italicized portions of the court's colloquy establish that the district court erroneously considered unproven charges in imposing sentence. We do not agree.

We will not set aside a sentence and remand for sentencing unless the sentencing court abused its considerable discretion. *State v. Black*, 324 N.W.2d 313, 315 (Iowa 1982). An abuse of discretion exists if the sentencing court relied upon unproven charges in sentencing. *State v. LeGrand*, 510 N.W.2d 59, 63 (Iowa App. 1993). Taken in context, however, the court's comments do not indicate that it relied upon unproven charges. The sentencing court did consider Jordan's rather lengthy criminal history, which includes numerous misdemeanor and traffic offense convictions, as well as felony convictions. A defendant's criminal history may properly be considered in determining sentence. *See id.* The sentencing court did not abuse its discretion in characterizing Jordan's criminal history as indicative of one who does not respect the law. We affirm the sentence imposed.

AFFIRMED.