IN THE COURT OF APPEALS OF IOWA

No. 1-236 / 99-0290
Filed May 9, 2001

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

WILLIAM R. MAUER,
Defendant-Appellant.

Appeal from the Iowa District Court for Dubuque County, Richard Gleason, District Associate Judge.

William Mauer appeals from the sentence entered upon his guilty plea to failure to render information and aid at the scene of a boating accident and prohibited operation of a boat. **AFFIRMED.**

Mark S. Beckman of Fitzsimmons, Beckman & Gilloon, Dubuque, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney General, Fred H. McCaw, County Attorney, and Mark Hostager, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Streit, JJ.

HUITINK, J.

I. Background Facts and Proceedings.

William Mauer was charged with failure to render information and aid at the scene of a motor vessel accident and prohibited operation, in violation of Iowa Code sections 462A.7 and 462A.12 (1997), following the collision of two motorboats on the Mississippi River on July 4, 1998. The district court accepted Mauer's *Alford* plea[1] as to these charges and sentenced him to concurrent terms of 365 and 30 days in the county jail, with all but 180 days to be suspended. Mauer was also placed on two years of supervised probation, fined $1000, and denied work release.

On appeal Mauer claims the length of his sentence constitutes cruel and unusual punishment in violation of the Eighth Amendment. Mauer also asserts the trial court abused its discretion in sentencing him to an excessive jail term and in refusing to allow him work release for the first thirty days of his sentence. Specifically, he argues the sentence imposed was too severe given the lack of need of rehabilitation or deterrence and that the court improperly considered allegations of alcohol usage on the day of the accident.

II. Eighth Amendment.

We initially reject the State's claim that Mauer failed to preserve error on this issue. Generally, issues not raised in the trial court may not be raised for the

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[1] An *Alford* plea allows a defendant to plead guilty without admitting the elements of the offense. In such a plea the defendant acknowledges the evidence strongly negates the defendant's claim of innocence and enters the plea to avoid a harsher sentence. *See North Carolina v. Alford*, 400 U.S. 25, 37-38; 91 S. Ct. 160, 167-68, 27 L. Ed. 2d 162, 171-72 (1970); *Committee on Prof'l Ethics and Conduct v. Sturgeon*, 487 N.W.2d 338, 340 (Iowa 1992).

first time on appeal. *State v. Taylor*, 336 N.W.2d 721, 726 (Iowa 1983). This rule is not applicable to void, illegal, or procedurally defective sentences. *State v. Thomas*, 520 N.W.2d 311, 313 (Iowa Ct. App. 1994). It is, however, applicable to challenges to a sentence imposed in accordance with the law, i.e. challenges to the constitutionality of a sentencing provision on its face, rather than as applied. *See State v. Ramirez*, 597 N.W.2d 795, 797 (Iowa 1999); *State v. Rubino*, 602 N.W.2d 558, 563 (Iowa 1999); *State v. Ceaser*, 585 N.W.2d 192, 195 (Iowa 1998). Because Mauer is challenging the constitutionality of his sentence as applied, normal error preservation rules do not apply, and we will address this contention on appeal. We review this claim de novo. *State v. August*, 589 N.W.2d 740, 742 (Iowa 1999).

The Eighth Amendment to the United States Constitution and article I, section 17 of the Iowa Constitution prohibit cruel and unusual punishment. Generally, a sentence that falls within the parameters of a statutorily prescribed penalty does not constitute cruel and unusual punishment. *State v. Cronkhite*, 613 N.W.2d 664, 669 (Iowa 2000). Only extreme sentences that are "grossly disproportionate" to the crime conceivably violate the Eighth Amendment. *State v. Lara*, 580 N.W.2d 783, 785 (Iowa 1998).

In the case before us Mauer argues that 180 days in jail and a denial of work release for thirty days is disproportionate to the offenses of endangering the lives and property of others through the reckless operation of a motorboat and failure to provide assistance to prevent the victims from drowning. This penalty is within the statutory parameters proscribed for this offense. Given the

seriousness of the offenses, we cannot find the sentence was grossly disproportionate to the crimes committed. We accordingly find Mauer's sentence does not constitute cruel and unusual punishment and affirm the district court on this issue.

III. Sentencing Discretion.

It is well settled that the measure of punishment selected by the district court lies within its sentencing discretion. *State v. Mai*, 572 N.W.2d 168, 170 (Iowa Ct. App. 1997). A sentence within the statutory limits, even if it is the most severe sentencing alternative, will be set aside only for abuse of discretion. *State v. Farnum*, 397 N.W.2d 744, 749 (Iowa 1986). An abuse of discretion is that exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Wright*, 340 N.W.2d 590, 593 (Iowa 1983).

Our supreme court has provided the following guidance in evaluating the court's use of discretion:

> 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. Cooley, 587 N.W.2d 752, 754-55 (Iowa 1998); *see also* Iowa Code § 901.5 (requiring that the court consider which sentence "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").

The record before us shows that the district court considered pertinent sentencing factors. The court stated:

> [T]he Court has read the presentence investigation, has reviewed Mr. Mauer's prior record, has reviewed the facts of this case and has now listened to the argument of counsel and the statement that Mr. Mauer has made in this. What the Court takes note of is that according to witness statements, and not only the witness statements of the boat that was hit, the Ploessls' boat, Mr. Mauer was engaged in dangerous conduct at the outset while on the river the morning of July 4, 1998, that all witnesses estimate his speed at 30 mph in a debris congested river. Mr. Mauer drove away or boated away from a possibly sinking boat, and the witnesses on the scene significantly disagree with his statement that he offered help. There is significant evidence to show that Mr. Mauer avoided police detection, not only on the night involved, but on subsequent occasions. . . . [T]here is no acknowledgement of liability or acknowledgement of responsibility in the PSI. . . . The reason for the Court's sentence this morning is based on what the Court considers Mr. Mauer's depraved indifference to the life and safety of the Ploessl family and to act as a deterrent for other members of the community that boat in this reckless manner.

We cannot agree with Mauer's contention that his crimes did not merit the severity of his sentence. His actions showed an extreme indifference to the safety of others, which, had one of the victims not been rescued, could have resulted in a charge of involuntary manslaughter or homicide by vehicle. *See* Iowa Code §§ 707.5, 707.6A(2). We find that defendant's actions and apparent failure to recognize the seriousness of such actions reflect a need for both rehabilitation and deterrence. *See generally State v. Bragg*, 388 N.W.2d 187, 192 (Iowa Ct. App. 1986) (defendant's failure to take responsibility is reflective of the defendant's need for rehabilitation). We accordingly find that the district court did not abuse its discretion in sentencing defendant.

We must also reject Mauer's contention that the district court improperly considered evidence of alcohol consumption. The court made no reference in his sentencing colloquy indicating he considered such evidence.

The decision of the district court is affirmed in its entirety.

AFFIRMED.