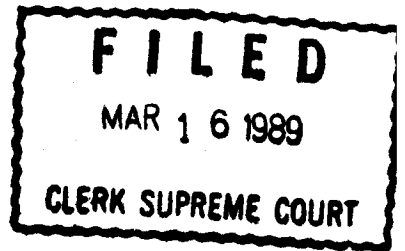


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

DANIEL J. BROESSEL,)

Defendant-Appellant.)

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8-630
88-325

Appeal from the Iowa District Court for Scott County
(No. CR131541-01), James E. Kelley, Judge.

Defendant appeals from his conviction, following a jury
trial, for delivery of a controlled substance. **AFFIRMED.**

Kent A. Simmons of Liebke & Simmons, Davenport, for
defendant-appellant.

Thomas J. Miller, Attorney General; Amy M. Anderson,
Assistant Attorney General; and Mary Howes-Davis and James
Ottesen, Assistant Scott County Attorneys, for plaintiff-
appellee.

Heard by Donielson, P.J., and Schlegel and Sackett, JJ.

DONIELSON, P.J.

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Defendant appeals from his conviction, following a jury trial, for delivery of a controlled substance. He contends his trial attorney rendered ineffective assistance by failing to depose a State witness and by failing to subpoena a potential defense witness. He also contends the sentencing court abused its discretion by imposing a sentence of imprisonment rather than probation.

Ineffective assistance claims are generally reserved for postconviction proceedings, but can be resolved on direct appeal when the trial record adequately presents them. State v. Ueding, 400 N.W.2d 550, 553 (Iowa 1987). Trial counsel in this case has not had the opportunity to defend his actions. He is entitled to his day in court. State v. Coil, 264 N.W.2d 293, 296 (Iowa 1978). This issue is reserved for postconviction in order to allow a full presentation of the relevant facts.

The remaining issue is whether the trial court abused its discretion in denying probation and sentencing Mr. Broessel to a term of imprisonment not to exceed ten years. Defendant claims this abuse amounts to a denial of his right to due process and violates the separation of powers principle.

A sentence will not be upset on appellate review unless the defendant demonstrates an abuse of trial court discretion or a defect in the sentencing procedure. State

v. Wright, 340 N.W.2d 590, 592 (Iowa 1983). The trial court must actually exercise its discretion, State v. Hildebrand, 280 N.W.2d 393, 396 (Iowa 1979), considering all relevant factors and every sentencing option before pronouncing sentence. Wright, 340 N.W.2d at 593. Factors to be considered are the traditional factors that surround the nature of the offense and the characteristics of the individual. Id. at 592.

From the record, it is clear the trial court exercised its discretion. The reasons for the sentence were:

First of all, the seriousness of the offense. This offense is classified by the Iowa legislature as a Class C felony which makes it a serious offense. The second reason is the Defendant's prior criminal history and the Defendant's failure to control his alcohol as shown by the report in the presentence investigation and the Court's observation of Defendant's intoxication during the trial of this case. The last two reasons for this sentence are the deterrents [sic] of the Defendant and deterrents [sic] of others in the community for committing like crimes. The epidemic of cocaine use in our community will not be tolerated by the Court. It has not been tolerated by the legislature. There is a penalty imposed and will be imposed. So anyone who is out there who has knowledge of these types of activities is given a message by this sentence that this community will not tolerate delivery of a dangerous drug like cocaine.

No abuse of discretion has occurred. The trial court's sentence fit the person and the circumstances, with no one factor determinative. State v. Dvorsky, 322 N.W.2d 62, 67 (Iowa 1982). Defendant has not made the affirmative showing of abuse and prejudice which is required to overcome the strong presumption in favor of the trial

court's sentence. Therefore, defendant's sentence by the district court is affirmed.

AFFIRMED.