

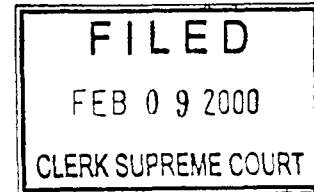
**IN THE COURT OF APPEALS OF IOWA**

No. 1999-516 (9-773) / 99-0820  
Filed February 9, 2000

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**JAMES EDWARD UNEKIS,**  
Defendant-Appellant.



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Appeal from the Iowa District Court for Jasper County, Gregory A. Hulse,  
Judge.

On appeal from his convictions for terrorism with intent, terrorism without intent, and carrying a concealed weapon, James Unekis argues the sentencing court erred in reviewing a victim impact statement that was completed by a person who was not a victim of the offenses. **AFFIRMED.**

Corey J. L. Walker of Walker, Knopf & Billingsley, Newton, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, ~~and~~ Steven Johnson, County Attorney, and James W. Cleverley, Jr., Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Hecht, JJ.

**HECHT, J.**

**James Edward Unekis** ("Unekis") appeals from his convictions for terrorism with intent, terrorism without intent, and carrying a concealed weapon. He argues the sentencing court erred in reviewing a victim impact statement that was completed by a person who was not a victim of the offenses. We affirm.

**I. Factual Background and Proceedings.** On March 17, 1999, Unekis pled guilty to terrorism with intent to provoke fear in another, terrorism without intent to injure, and carrying a concealed weapon. The crimes arose from incidents occurring in or near Newton, Iowa, on the evening of February 4, 1999. Unekis drove past and fired several shots at a church and an elementary school. At the time of the shootings, no members of Unekis's family were present in either building, although other individuals were present at the time.

The district court ordered a presentence investigation (PSI) in this matter. In determining Unekis's sentence, the district court considered the information contained in the PSI and a victim impact statement completed by Patrice Unekis, Unekis's wife. The district court imposed a sentence of concurrent terms of imprisonment not to exceed ten years for terrorism with intent, five years for terrorism without intent, and two years for the weapon conviction. On appeal, Unekis argues the district court erred in considering the victim impact statement authored by his wife because neither his wife nor his children were victims of his crimes.

**II. Standard of Review.** We review the district court's sentence for the correction of errors at law. *State v. Phillips*, 561 N.W.2d 355, 357 (Iowa 1997). "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, such as trial court consideration of impermissible factors.” *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995) (citation omitted).

**III. Sentencing.** Unekis contends his wife is not a victim of the crimes as contemplated by the statute. Iowa Code section 915.10(3) defines “victim” as

[A] person who has suffered physical, emotional, or financial harm as the result of a public offense, other than a simple misdemeanor . . . .  
 “Victim” also includes the immediate family members of a victim . . . who was under eighteen years of age at the time of the offense.

Iowa Code § 915.10(3) (1997) (emphasis in original). The term “victim” has been interpreted by the Iowa Supreme Court to mean the actual subject of the crime. See *State v. Sumpter*, 438 N.W.2d 6, 8 (Iowa 1989). There is no evidence in the record suggesting Unekis’s wife or the Unekis children were in the buildings when Unekis fired the shots. The record also does not suggest she or their children were the intended targets of the gunfire. The State concedes the district court erred in reviewing the victim impact statement. We conclude the district court did err.

However, even if the district court’s consideration of the statement was error, such error does not justify reversal if it resulted in no prejudice to Unekis. See *State v. Grimes*, 569 N.W.2d 378, 382 (Iowa 1997); *Sumpter*, 438 N.W.2d at 8-9. Unekis claims he was prejudiced by the statement because it revealed information about him that was previously unknown to the court. Unekis points specifically to the statement’s allegations of drug usage, manipulation to obtain drugs, and domestic abuse. We conclude the substance of these allegations was also contained in the PSI and comments of counsel at the time of the sentencing hearing. See *Phillips*, 561 N.W.2d at 359.

Our decision in this case is influenced by an additional consideration. In order to overcome the presumption the district court properly exercised its discretion, Unekis must affirmatively show the sentencing court relied on the improper evidence. See *State v. Ashley*, 462 N.W.2d 279, 282 (Iowa 1990). The record documents the district court's consideration of the defendant's age, prior record, the absence of deferred judgments, employment circumstances, family circumstances, and the nature of the offense. These are proper sentencing factors that must be considered pursuant to Iowa Code section 901.5. See *State v. Sailer*, 587 N.W.2d 756, 763 (Iowa 1998). Although the record reflects the court read the victim impact statement before sentence was imposed, we are unable to conclude the court actually relied upon it in arriving at the sentence. The sentencing court's public acknowledgement it felt sympathy for the defendant's family is not enough, by itself, to demonstrate improper reliance upon the contents of the statement. The court's expression of the natural human sentiment of sympathy for the spouse and minor children of a parent sentenced to a period of incarceration does not distinguish this case from any other case in which a family is torn apart by illness, crime, and incarceration of a parent. Unekis has failed to show the victim impact statement generated the court's sympathy for the family. Under these circumstances, we find no prejudicial error resulting from the sentencing court's review of the victim impact statement authored by Unekis's spouse. We affirm the sentence of the district court.

**AFFIRMED.**