IN THE COURT OF APPEALS OF IOWA

No. 1-061 / 99-1592
Filed April 11, 2001

STATE OF IOWA,
Appellee,

vs.

KRISTEN WEN PAUL,
Appellant.

FILED
APR 11 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Decatur County, Darrell Goodhue, Judge.

Kristen Wen Paul appeals her judgment and sentence following a guilty plea to possession with intent to deliver five grams or less of methamphetamine, a class "C" felony in violation of Iowa Code section 124.401(1)(c)(6) (1999). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel L. Mullins, Assistant Attorney General, and Carol Clark, County Attorney, for appellee.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

VOGEL, J.

Kristen Wen Paul was sentenced on the crime of possession of methamphetamine with intent to deliver, in violation of Iowa Code section 124.401(1)(c)(6) (1999). On appeal, Paul claims the district court abused its discretion by not considering a then recent code change allowing for suspended sentences in conjunction with a drug court program or other community-based correctional facility in lieu of incarceration.[1] We affirm.

Background Facts and Proceedings. Paul entered a guilty plea to possession of methamphetamine with intent to deliver. Although this was Paul's first drug-related conviction, her prior criminal history included a number of convictions relating to driving while her license was suspended, denied, cancelled or revoked, as well as convictions for theft, criminal mischief and failure to appear. At sentencing the State requested a prison sentence and fine, with Paul requesting a suspended sentence and extensive supervised probation at a residential facility. After some discussion off the record, the court and both counsel concurred probation was an option that could be considered. In rendering its judgment, the court imposed an indeterminate ten-year sentence with a one-third credit towards the mandatory minimum sentence applicable to violations of Iowa Code section 124.401(c). Paul appeals.

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[1] When imposing sentence for a first conviction of possession of methamphetamine with intent to deliver in violation of § 124.401(1)(c), "the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier." Iowa Code § 124.401E(1) (1999).

Scope of Review. Our review is for correction of errors at law. Iowa R. App. P. 4. A district court's sentencing decision is granted a strong presumption in its favor, and a sentence imposed within statutory limits will be set aside only for an abuse of discretion. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996).

Consideration of Sentencing Options. When a district court is faced with sentencing options, it must exercise its discretion in determining what sentence to impose. *State v. Ayers*, 590 N.W.2d 25, 27 (Iowa 1999). Exercise of this discretion is demonstrated by stating on the record reasons for the particular sentence chosen. Iowa R. Crim. P. 22(3)(d); *Thomas*, 547 N.W.2d at 225. As a general matter, this same showing is not required for the court's rejection of other sentencing options. *Id.*

At Paul's sentencing the district court stated:

> I'm particularly appalled by the record of this defendant. . . . It just shows a wholesale disregard of the judicial system and the laws of the State of Iowa and then you come to court requesting probation. . . . Based on the record of this defendant, the Court does not feel that this is an appropriate time to grant probation.

As the record demonstrates, this is not a case where the district court felt it had no discretion to suspend Paul's sentence and order her to a residential treatment facility. *Cf. State v. Ayers*, 590 N.W.2d 25 (Iowa 1999) (sentence vacated where the court erroneously believed it did not have discretion to order a sentence below the mandatory minimum). By rejecting probation, the court clearly understood it had some discretion. The question Paul raises is whether the court specifically knew it had the option to suspend the sentence under

section 124.401E.[2] We need not make that specific finding because the district court's statements reveal it would not have deemed a suspended sentence with community-based corrections a suitable punishment for this defendant.

When a district court's statements speak to some of the sentencing alternatives, and do not disclose a miscomprehension of those alternatives, we will presume the court was fully aware of the range of sentencing options available for the punishment of the defendant and the protection of the community. *See State v. Vanover*, 559 N.W.2d 618, 635 (Iowa 1997). It is the defendant's burden to provide a record that reveals a district court's abuse of its sentencing discretion. *Id.* (citing *State v. Mudra*, 532 N.W.2d 765, 767 (Iowa 1995)). Here the district court considered and rejected the available option of probation, and nothing in the record affirmatively demonstrates it failed to understand the range of viable alternatives. *Cf. State v. Sandifer*, 570 N.W.2d 256, 257 (Iowa Ct. App. 1997) (finding district court's reference to fines as "mandatory" demonstrated the court's belief that it had no discretion to suspend the sentence imposed). Moreover, the court rationally and reasonably supported its decision to incarcerate Paul, which satisfies its responsibilities to the defendant under Iowa Rule of Criminal Procedure 22(3)(d), and is sufficient for

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[2] Even prior to the enactment of Iowa Code § 124.401E a district court had authority, when imposing sentence for a violation of § 124.401(1)(c)(6), to suspend a sentence and order a defendant to a community correctional residential treatment facility. Iowa Code § 907.3(3) (1999).

the purpose of our review.[3] As Paul has failed to demonstrate an abuse of discretion, we affirm the sentencing order of the district court.

AFFIRMED.

[3] Paul also contends that trial counsel was ineffective by failing to specifically draw the court's attention to § 124.401E. Even assuming this was a failure to perform an essential duty, the record demonstrates no prejudice resulted, as the district court rejected probation on reasonable grounds.