FILED
AUG 26 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	Filed August 26, 1987
ROBERT TORRES,	)	6-552 86-1255
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Muscatine County (No. 1631 1085), J. L. Burns, Judge.

The defendant appeals from the sentences imposed upon his guilty pleas to possession with the intent to deliver cocaine and carrying a weapon. **AFFIRMED.**

D. Raymond Walton of Aspelmeier, Fisch, Power, Warner & Engberg, Burlington, for defendant-appellant.

Thomas J. Miller, Attorney General; Lona Hansen, Assistant Attorney General; and Stephen J. Petersen, Muscatine County Attorney, for plaintiff-appellee.

Considered by Oxberger, C.J., Hayden and Sackett, JJ.

OXBERGER, C.J.

In this appeal, defendant Robert Torres challenges the sentences imposed upon him after he pled guilty to the crimes of possession of a controlled substance with intent to deliver and carrying a firearm. See Iowa Code §§ 204.401(1), 724.4 (1985). Torres has raised two issues for appellate consideration: First, he argues that the trial court abused its sentencing discretion by considering the fact that he had withdrawn a prior plea of guilty to each of the above-mentioned crimes; additionally, Torres argues that in the circumstances of this case, it was an abuse of discretion for the trial court to impose a prison sentence. We disagree with both of these contentions, and affirm.

Before reaching the merits of this appeal, we find it necessary to set forth the following operative facts. After his arrest, Torres initially entered written pleas of not guilty to both of the charges filed against him. Three months later, in February of 1986, he appeared in person, withdrew his pleas of not guilty, and entered pleas of guilty pursuant to a rule nine plea agreement. See Iowa R. Crim. P. 9. After the plea agreement collapsed, Torres withdrew his pleas of guilty. On the date that Torres' trial was scheduled to commence, however, he appeared before the court and again pled guilty to both charges. A sentencing hearing was then scheduled, which Torres failed to attend due to illness. Torres also failed to attend a rescheduled sentencing hearing, for which he offered no excuse. Torres did attend a third rescheduled hearing, and the trial court sentenced him to the maximum term of imprisonment for both charges: ten years for the offense of possession of a controlled substance with intent to deliver, and two years for carrying a firearm.

Torres' first assignment of error stems from the following statement made by the trial court at the sentencing hearing. Before pronouncing its sentence, the trial court noted:

> Well, there are several things that are quite troublesome here. One of which I have already mentioned is what you were dealing in. You appeared in court in this case, entered a plea of guilty, withdrew that plea . . . . Then again as it comes time for trial you again plead guilty . . . .

Torres urges that this passage indicates that in determining his sentence, the trial court considered the fact that he had withdrawn his prior guilty pleas. It is Torres' further contention that consideration of this fact represents an abuse of the trial court's sentencing discretion. We cannot agree.

It is well settled that the imposition of sentences rests within a trial court's discretionary power and consequently, a trial court's decision in this regard will be set aside only when an abuse of discretion has been demonstrated. State v. Pappas, 337 N.W.2d 490, 493 (Iowa 1983). If the sentence imposed is within the statutory maximum, an abuse of discretion is rarely found unless the trial court failed to exercise its discretion or considered inappropriate matters in determining what sentence to impose. Id.

Although Torres argues that the trial court relied upon inappropriate matter in considering the withdrawal of his earlier guilty pleas, when the trial court's mention of this item is taken in context, it is apparent that the court did not consider this fact in arriving at the sentence imposed. See State v. Ramirez, 400 N.W.2d 586, 590 (Iowa 1987) (statements made by sentencing court must be viewed in entire context); State v. Wagner, 359 N.W.2d 487, 490 (Iowa 1984). Rather, the transcript of the sentencing hearing discloses that the trial court predicated its decision to incarcerate Torres upon the seriousness of the offenses involved, the desire to protect the community from further criminal conduct, and its desire to defer similar conduct in the future. Each of these items is a proper sentencing criterion. State v. Ramirez, 400 N.W.2d at 590. In these circumstances, we conclude that Torres has failed to sustain his burden of demonstrating that an abuse of discretion has occurred and that he suffered resultant

prejudice. See State v. Stanley, 344 N.W.2d 564, 568 (Iowa App. 1983). Accordingly, we find his first assignment of error without merit.[1]

Torres additionally argues that the trial court abused its discretion by failing to consider sentencing him to a lesser term of imprisonment or granting his request for probation. Again, we cannot agree.

At the outset, we find it instructive to set forth the following principles governing our review of the above issue. It is well established that the appellate courts of this state interfere with discretionary sentencing only if an abuse of discretion has occurred. State v. Dvorsky, 322 N.W.2d 62, 67 (Iowa 1982). A trial court must, however, exercise its discretion. Id. In this connection, it is incumbent upon the court to consider the nature of the offense, the surrounding circumstances, and the defendant's character, age, and likelihood to reform. Id., see also State v. Hildebrand, 280 N.W.2d 393, 396 (Iowa 1979); Iowa Code § 907.5 (1985).

In the instant case, it is clear that the trial court carefully contemplated each of these considerations. The transcript of the sentencing hearing discloses that the court arrived at its decision after considering the nature of the offense, the recommendation suggested in the presentence report and the rehabilitative effects of incarceration. In addition, the court carefully delineated its belief that Torres' request for probation could not be granted for the additional reason that he had failed to attend the scheduled sentencing hearings and to

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[1]Torres does not argue that the trial court's mention of the withdrawal of the prior guilty pleas contravened Iowa Rule of Criminal Procedure 9(5). Parenthetically, however, we note that rule 9(5) proscribes the introduction at trial of evidence concerning a withdrawn guilty plea. See State v. Epps, 316 N.W.2d 691, 693 (Iowa 1982). Hence, rule 9(5) is inapplicable in the present case.

comply with the court's order that he do so. In these circumstances, we cannot say that an abuse of discretion has occurred.

AFFIRMED.