IN THE COURT OF APPEALS OF IOWA

No. 1-304 / 00-1634
Filed May 23, 2001

FILED
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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JENNIFER LYNN BROWN,
Defendant-Appellant.

Appeal from the Iowa District Court for Henry County, R. David Fahey (plea) Criminal, Cynthia H. Danielson (sentencing), Judges.

Defendant appeals from the judgment and sentence entered upon her guilty pleas to homicide by vehicle in violation of Iowa Code section 707.6A(1) (1999) and serious injury by vehicle in violation of section 707.6A(4). She contends the trial court erred in failing to suspend the sentence of incarceration imposed for serious injury by vehicle. **AFFIRMED.**

Thomas M. Walter of Johnson, Hester, Walter & Breckenridge, L.L.P., Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, and Michael A. Riepe, County Attorney, for appellee.

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

SACKETT, C.J.

Appellant defendant Jennifer Brown appeals the district court's sentence of imprisonment following her guilty plea to Homicide by Vehicle in violation of Iowa Code section 707.6A(2)(a) and Serious Injury by Vehicle in violation of Iowa Code section 707.6A(4) (1999).

On June 21, 1999, defendant Jennifer Brown, now age twenty-four, was driving while sleep-deprived and under the influence of alcohol when she crossed the center line and struck an oncoming vehicle, leaving its driver, Phillip Bigger, dead, and his wife, Pauline Bigger, seriously injured. Defendant had not slept the previous day, had worked the midnight shift at Motorola, and had then gone with some co-workers the morning of the twenty-first to East Lake Park to play volleyball. Defendant drank beer between sets of volleyball. She played about two or three sets before driving home around two o'clock in the afternoon, when the accident occurred.

Defendant pled guilty to a charge of homicide by vehicle as well as a charge of serious injury by vehicle. For the homicide by vehicle charge the district court gave her a ten-year suspended sentence and fined her $1000. For the serious injury by vehicle charge the court gave her a five-year sentence, which it did not suspend, and fined her $750. The court ruled that these terms were to run consecutively, with the sentence for the serious injury by vehicle charge running first.

Defendant appeals, claiming the five-year sentence should also be suspended and that the sentences should run concurrently. She claims that the

trial court abused its discretion by basing the prison sentence solely upon the nature of the injury inflicted, in this case serious injury and death.

Our review of the district court's sentence is for abuse of discretion. *State v. Loyd,* 530 N.W.2d 708, 713 (Iowa 1995). Sentencing decisions of the trial court are cloaked with a strong presumption in their favor, and an abuse of discretion will not be found unless the defendant shows that such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Id.* (citing *State v. Johnson,* 513 N.W.2d 717, 719 (Iowa 1995)). We defer to the district court's imposition of a sentence if it gives reasoning demonstrating an exercise of discretion and if the court indicates its concerns motivating it to select a particular sentence. *See State v. Garrow,* 480 N.W.2d 256, 259 (Iowa 1992).

The defendant has failed to establish that the trial court's sentencing defendant to a five-year prison term, to be served consecutively with her ten-year suspended sentence, was an abuse of discretion. The trial court's sentence was not based solely upon the nature of the injury; in fact, the court took into account defendant's young age, her lack of a prior criminal record or deferred judgment, her good employment record, her educational pursuits, and her strong family ties. However, the trial court also considered the seriousness of her crime, which resulted in both death and serious injury, as well as the sentencing goal of maximizing rehabilitation opportunities while protecting the community from further offenses by the defendant. Iowa Code §901.5 (1999). The court also took into account the public policy allowing victims retribution against criminals. After considering the above, which include the factors set out in Iowa Code

sections 907.5 and 901.5, as well as a pre-sentence investigation report, the victim-impact statements, and recommendations by both state and defense counsel, the court balanced the victim's interests, the defendant's interests, and society's interests and came up with a sentence it believed was most just to all three. That sentence included a five-year term in prison, to be served consecutively with another ten-year suspended sentence. The district court's decision was well-reasoned and considered all of the relevant factors. We find no abuse of discretion.

AFFIRMED.