IN THE COURT OF APPEALS OF IOWA

No. 5-416 / 94-206

STATE OF IOWA,

Plaintiff-Appellee,

vs.

JACK H. DEATON,

Defendant-Appellant.

FILED
OCT 31 1995
CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, James R. Havercamp, Judge.

Defendant appeals from sentence imposed upon his conviction of possession with intent to deliver marijuana. **AFFIRMED.**

James Bryson Clements, Davenport, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, William E. Davis, County Attorney, and Hugh J. Pries, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Habhab and Huitink, JJ

HABHAB, J.

On October 24, 1991, police officers, pursuant to a search warrant, searched the residence of Jack Deaton. The officers found fifty-seven grams of marijuana, five grams of cocaine, $1840 in cash, and drug paraphernalia. Deaton's residence was within fifty feet of a school. Deaton was arrested at the time of the search.

On November 5, 1991, Deaton was charged with the following counts: (I) possession with intent to deliver a controlled substance (cocaine), in violation of Iowa Code sections 204.401(1)(c) and 204.401A; (II) failure to affix a drug tax stamp (cocaine), in violation of section 421A.12; (III) possession with intent to deliver a controlled substance (marijuana), in violation of sections 204.401(1)(d) and 204.401A; and (IV) failure to affix a drug tax stamp (marijuana), in violation of section 421A.12.

At the time of his arrest, Deaton was on parole for a federal conviction. In October 1991, the United States took custody of defendant and revoked his parole. He remained in federal custody until March 1, 1993.

On May 6, 1993, the district court granted defendant's motion to dismiss Count II on the ground that he possessed an insufficient quantity of cocaine to be considered a dealer under section 421A.1. Deaton entered into a plea agreement with the State of Iowa. On October 15, 1993, he pled guilty to the charge of possession with intent to deliver a controlled substance (marijuana). The State agreed to dismiss the remaining two charges against him, Counts I and IV.

The original sentencing date was continued due to defendant's request to submit additional information. Defendant objected to several items in his pre-sentence investigation (PSI), claiming they were inaccurate, and sought to introduce documentation of his gainful employment. Due to time constraints, the Department of Corrections did not respond to defendant's objections before the second date scheduled for sentencing. On that date, the court determined it would not continue sentencing for a second time.

The court sentenced defendant to a term of imprisonment not to exceed five years. The court stated it recognized defendant's objections to the PSI. The court stated that even considering the information defendant sought to introduce, due to defendant's prior conviction, he should be sentenced to a term of imprisonment instead of placed on probation. Defendant has appealed his sentence.

I. Defendant contends the district court erred in proceeding with sentencing without first obtaining a supplemental PSI. He claims there were seventeen significant instances of misinformation in the PSI. He believes the court should have continued sentencing instead of proceeding with sentencing based on the inaccurate report.

We find no error in the district court's decision to proceed with sentencing. The court stated it had no problem considering the PSI with defendant's corrections. Based on the court's acceptance of defendant's corrections, there was no need to wait for the Department of Corrections to respond to defendant's corrections. Also,

because the court accepted defendant's corrections. defendant cannot now claim the court relied on an inaccurate report in imposing sentence.

II. Defendant contends the district court abused its discretion by sentencing him without giving due consideration to all pertinent facts and circumstances. He believes the court was not concerned about whether the PSI was accurate because the court did not consider the PSI. He believes the court imposed sentence based only on his prior conviction.

A sentence will be disturbed by a reviewing court only upon a showing that the trial court abused its discretion. *State v. Dicks*, 473 N.W.2d 210, 215 (Iowa App. 1991). No abuse of discretion will be found unless the defendant shows such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Id.* Defendant has the burden of showing an abuse of discretion. *State v. LeGrand*, 501 N.W.2d 59, 64 (Iowa App. 1993).

Under section 901.5, when considering authorized sentencing options, a court should consider:

> which of them or which combination of them, in the discretion of the court, will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.

In addition, when determining a proper sentence, a court should consider the nature of the offense, the attending circumstances, and the defendant's age, character, and

propensities or chances for reform. *State v. Johnson*, 476 N.W.2d 330, 335 (Iowa 1991).

Here, the court had before it the PSI and defendant's corrections to the PSI, which the court stated it had read. The court also allowed defendant to make a statement to the court. We believe the court considered all of these factors, along with defendant's criminal history, in imposing sentence. We find no abuse of discretion in the sentence imposed by the district court.

We affirm defendant's conviction and sentence for the crime of possession with intent to deliver a controlled substance (marijuana). Costs of this appeal are assessed to defendant.

AFFIRMED.