IN THE COURT OF APPEALS OF IOWA

No. 7-600 / 96-2133 000431

STATE OF IOWA,

Appellee,

vs.

MICHAEL JOE TAYLOR,

Appellant.

FILED
NOV 25 1997
CLERK SUPREME COURT

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

Michael Taylor appeals the sentences imposed on his guilty pleas to theft in the fourth degree and perjury of statements. **AFFIRMED.**

Kent A. Simmons, Davenport, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Gregory Becker, University of Iowa Legal Clinic, William E. Davis, County Attorney, and Julie A. Walton, Assistant County Attorney, for appellee.

Considered by Cady, C.J., and Huitink, and Mahan, JJ.

CADY, C.J.

This is an appeal by a defendant claiming he received excessive sentences following his convictions for theft in the fourth degree, in violation of Iowa Code section 714.2(4) (1995), and perjury, in violation of section 720.2. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Taylor was charged with third-degree burglary and fourth-degree theft. These charges arose when he took a television set from Days Inn in Davenport. Taylor was also charged with perjury. The State alleged he made a false statement of material fact in order to obtain an Iowa Identification Card in the name of Brian Pekore.

Taylor pled guilty to fourth-degree theft and perjury. At the sentencing hearing the district court noted Taylor had a criminal history, was reluctant to be placed at the Residential Corrections Facility, and had been unable to lead a stable lifestyle. Taylor was sentenced to a term of imprisonment not to exceed one year on the theft charge, and a term of imprisonment not to exceed five years on the perjury charge. These sentences were imposed concurrently.

Taylor appealed. He claims the district court abused its discretion by not placing him on probation. He believes the court improperly considered criminal charges involving no disposition. He also asserts he was not reluctant to attend the Residential Corrections Facility, but merely expressed a preference to be placed on probation.

On appeal, we review to determine whether the district court abused its discretion in issuing a particular sentence. *State v. Mudra,* 532 N.W.2d 765, 766 (Iowa 1995). We determine the sentences in this case were not based on prior, unprosecuted offenses. The court could properly look at prior convictions, and note defendant had been unsuccessfully placed on probation in Florida.

The pre-sentence investigation (PSI) recommended probation, with consideration for Residential Corrections Facility placement. The PSI also noted Taylor was not enthusiastic to attend the Residential Corrections Facility. The court stated it was reluctant to send Taylor to this facility if he would not enthusiastically participate in the program.

The district court also stated defendant had the skills to earn a living as an iron worker, but he did not take advantage of his skills and instead engaged in criminal activity. The PSI showed defendant had been unable to live a stable life.

For the reasons noted by the district court at the sentencing hearing, we find the sentence in this case is appropriate. We determine the district court did not abuse its discretion, and did not consider prior, unprosecuted offenses. We affirm Taylor's convictions and sentences.

AFFIRMED.