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**IN THE COURT OF APPEALS OF IOWA**

No. 0-101 / 99-655
Filed April 28, 2000

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CLERK SUPREME COURT

**STATE OF IOWA,**
Plaintiff-Appellee,

**vs.**

**HATTIE PEARL MATLOCK,**
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Walter Rothschild, District Associate Judge.

Defendant appeals from the judgment and sentence entered upon a jury verdict finding her guilty of third-degree theft in violation of Iowa Code sections 714.1(6) and 714.2(3) (1997). **SENTENCE VACATED AND REMANDED FOR RESENTENCING.**

Raphael M. Scheetz, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Randall Jackson, Assistant County Attorney, for appellee.

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

HUTCHINSON

*I. Background Facts and Proceedings.*

The State filed a trial information charging Matlock with theft in the third degree, in violation of Iowa Code sections 714.1(1) and 714.2(3). A jury found her guilty, and Matlock was sentenced to a prison term not to exceed two years.

On appeal Matlock argues the district court abused its sentencing discretion by improperly relying solely on her criminal record in selecting the sentence imposed.

*II. The Merits.*

We review the district court's sentencing decision for an abuse of discretion. *State v. Mai*, 572 N.W.2d 168, 170 (Iowa App. 1997). No abuse of discretion will be found unless the defendant shows that such discretion was exercised for reasons clearly untenable or to an extent clearly unreasonable. *Id.* In exercising its discretion, the district court is to weigh all pertinent matters in determining a proper sentence, including the nature of the offense, the attending circumstances, the defendant's age, character, and propensities or chances for reform. *State v. Cooley*, 587 N.W.2d 752, 753 (Iowa 1998); *State v. Johnson*, 513 N.W.2d 717, 719 (Iowa 1994). Each sentencing decision must be made on an individual basis, and no single factor alone is determinative. *Johnson*, 513 N.W.2d at 719.

When a sentence is not mandatory, the district court must exercise its discretion in determining what sentence to impose. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). The sentencing court must state on the record its

reasons for selecting the sentence imposed. Iowa R. Crim. P. 22(3)(d); *State v. Taggart*, [redacted] N.W.2d 877, 882 (Iowa App. 1994). The purpose of this rule is to allow the appellate courts to determine whether the trial court abused its sentencing discretion. *State v. Matlock*, 304 N.W.2d 226, 228 (Iowa 1981).

The court's stated reason for sentencing Matlock to a term of incarceration was as follows:

> Well, the court does not have any alternative based on your past criminal record but to conclude that you're a habitual thief. You have proven that. If you want to stop going to prison, then stop stealing.
>
> And the jury heard your tale about what happened. They didn't believe you. With your record, placing something in a purse while in a store would lead any reasonable person to conclude that you were stealing that particular item. And that's what the jury concluded. Based on your criminal record I see no rehabilitation on your part. You continue to commit criminal offenses.
>
> The sentence of the court will be that you be confined for a period not to exceed two years. And you're committed to the custody of the director of the State Department of Corrections to serve that sentence.

The State disputes Matlock's claims, citing the court's earlier acknowledgment of its receipt of a presentence investigation report and inquiry concerning the accuracy of its content. The State also cites the parties' arguments, which included reference to additional sentencing considerations. Although the State's account of the sentencing hearing is essentially correct, the matters referred to are not those by which we measure the court's discharge of its sentencing duty. Whether the court properly exercised its sentencing discretion is measured by its reasons stated in support of the sentence imposed and not by the arguments of counsel or the simple fact that the court received a presentence report.

The foregoing excerpt from the sentencing record makes no reference to any other sentencing factors besides Matlock's criminal record. In the absence of such references, we are unable to say the district court discharged its duty to weigh all pertinent matters in determining the proper sentence to impose in this case. The resulting abuse of discretion requires us to vacate Matlock's sentence and remand for resentencing.

**SENTENCE VACATED AND REMANDED FOR RESENTENCING.**

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