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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	Filed September 27, 1983
Plaintiff-Appellee,	)	
vs.	)	3-116 69241
JON A. WHITE,	)	
Defendant-Appellant.	)	

Appeal from Johnson District Court, Joseph Thornton, Judge.

Defendant appeals the two-year sentence imposed following his guilty plea to the charge of driving a motor vehicle while his license was barred as an habitual offender in violation of Iowa Code § 321.561, an aggravated misdemeanor. AFFIRMED.

L. G. Klein and Daniel E. Cook Coralville, for defendant-appellant.

Thomas J. Miller, Attorney General, and Marcia Mason, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Schlegel, and Hayden, JJ. Sackett, J., takes no part.

PER CURIAM

In June 1982, defendant Jon A. White was charged with driving a motor vehicle while his license was barred as an habitual offender in violation of Iowa Code sections 321.560 and 321.561. In August 1982, defendant pleaded guilty as charged. At the plea proceeding trial court informed defendant of the constitutional rights he was waiving by pleading guilty, the nature and elements of the offense, and the maximum possible sentence of two years incarceration. Although trial court knew that defendant was on probation for a previous conviction of operating a motor vehicle while barred, trial court did not advise defendant of the consequences the guilty plea would likely have on his probationary status. The trial court also did not advise defendant of the possibility of a deferred sentence. After accepting the guilty plea, trial court ordered a presentence investigation report and set a sentencing date.

At sentencing, defendant presented considerable testimony in mitigation, including his personal situation, his being the sole support of his parents, his military record, his business interests, and the fact that he had never caused any traffic accident. Defendant also testified that he owned several insurance agencies in several different cities, which caused him to travel about 83,000 miles per year. He was barred from driving for six years because of his habitual offender status; during that period he had attempted to comply with his status as a barred driver by hiring other people to drive him; and he testified that on rare occasions he had to drive when stranded or when no one else was available. Finally, defendant claimed that incarceration would completely destroy his insurance businesses, and he requested a deferred sentence.

The trial court imposed the maximum sentence of two years incarceration. The court noted defendant's numerous speeding violations, previous conviction of driving under revocation, and previous conviction of driving while barred, and that two of the speeding offenses occurred after defendant's previous conviction of driving while barred. The court concluded that defendant's action "almost borders on a contempt for the law," and that probation was therefore not appropriate.

Defendant first claims the trial court did not exercise its discretion in sentencing him to the maximum penalty provided by statute. He claims the trial court did not consider a lesser penalty or a deferred or suspended sentence because the trial court did not take into account the mitigating circumstances introduced by defendant.

In State v. Robbins, the Iowa Supreme Court determined that:

> the legislature intended sentences under § 321.561 to be subject to probation at the trial court's discretion. . . . The duty of a sentencing judge in every case is to consider available options, to give due consideration to all circumstances in the particular case, and to exercise that option which will best accomplish justice both for society and for the individual defendant.

257 N.W.2d 63, 70.

Defendant cites Iowa Code § 907.5, which lists many factors to be taken into consideration when granting or denying a deferred or suspended sentence. However, the statute also states that "the court first shall determine which option, if available, will provide maximum opportunity for the rehabilitation of the Defendant and protection of the community from other offenses by the Defendant. . . ." Defendant has been given ample opportunities for rehabilitation. Defendant's speeding violations total twenty in six years: five in 1977, seven in 1978, four in 1979, and apparently four since he was barred from driving as an

habitual violator in 1979. The trial court concluded that defendant's action "almost borders on a contempt for the law." We agree. Although defendant hired drivers during the period during which he was barred, he also drove a vehicle when he determined it was necessary and concommitantly violated the speed laws of the state four times. The evidence is clear he has never respected or adhered to the speed laws of this state. The fact that he has not been at fault for any accidents does not alter his disregard for the law. The trial court does not have to name everything it took into consideration in reaching its decision in its statement of reasons for the record. Trial court evidently believed defendant's disregard of the law outweighed the mitigating factors when it stated: "It appears to the Court that the imposition of fines and probation have not gotten your attention and done absolutely no good, Mr. White." It is not evident to us that trial court refused to exercise discretion by ordering defendant's incarceration in this case.

Defendant's second contention is that a two-year incarceration is grossly disproportionate to the offense. Our scope of review in criminal sentences was discussed in State v. Randall, 259 N.W.2d 543, 544 (Iowa 1977). The trial court has discretion to determine whether to sentence defendant to jail or assess a fine rather than sentencing him to imprisonment. Id. Recently, the United States Supreme Court reversed a sentence under a South Dakota recidivist statute where the crime committed was "viewed by society as among the less serious offenses," as were the prior felonies committed. But the statute there was extremely punitive, providing for life imprisonment with no possibility of parole. Solem v. Helm, ___ U.S. ___, ___, 103 S. Ct. 3001, 3006, 77 L. Ed. 637, 644 (1983). The court held the sentence significantly disproportionate to the crime committed. Id. at ___, 103 S. Ct. at 3016, 77 L. Ed. at 658. The base crime in the instant case, speeding, similarly is viewed by society as among the less serious offenses. The

sentence imposed, however, is not significantly disproportionate as was the sentence in Solem v. Helm. As stated in Robbins, "[t]he penalty is indeed severe but we believe it is well within the legislative limits of discretion in its efforts to minimize highway injuries and deaths. Apparently the legislature concluded strong measures were necessary to deter those who were already guilty of repeated offenses from further violations." 257 N.W.2d 63, 68 (Iowa 1977).

Finally, defendant argues the trial court erred in failing to inform him of the effect of his guilty plea on his existing probationary status. The State claims defendant is barred from challenging the trial court's omission because he failed to timely file a motion in arrest of judgment. In Peoples Trust & Savings Bank v. Armstrong, 297 N.W.2d 372 (Iowa 1980), the Iowa Supreme Court stated that "[u]nder amended Iowa R. Crim. P. 23(3)(a) a defendant must challenge the adequacy of a guilty plea proceeding by motion in arrest of judgment in the trial court or else be precluded from asserting such challenge on appeal." Id. at 370. This bars appeal except when the court does not "inform the defendant that any challenges to a plea of guilty based on alleged defects in the plea proceedings must be raised in a motion in arrest of judgment and that failure to so raise such challenges shall preclude the right to assert them on appeal." Id. (emphasis added). Defendant claims the trial court incorrectly worded the admonition, saying "right to a certain amount appeal" rather than "right to assert them on appeal." It is evident that the words used were correct, just incorrectly heard and reported on the record. Therefore, defendant is barred from alleging defects in the proceedings involving his guilty plea because he failed to make a timely motion in arrest of judgment.

AFFIRMED.