IN THE COURT OF APPEALS OF IOWA

No. 1-100 / 00-574
Filed March 28, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

THEREASA TEEANN STOCKSTELL,
Defendant-Appellant.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Johnson County, Patrick R. Grady (sentencing) and David S. Good (plea hearing), Judges.

Thereasa Stockstell appeals from the judgment and sentence entered upon her guilty plea to second-degree theft. **AFFIRMED.**

Dennis A. Bjorklund, Coralville, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, J. Patrick White, County Attorney, and Michael Brennan, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

HUITINK, P.J.

Thereasa Stockstell appeals from the judgment and sentence entered upon her guilty plea to theft in the second degree, in violation of Iowa Code sections 714.1(3) and 714.2(2) (1999). She claims she received ineffective assistance of counsel. She also claims the district court abused its discretion by sentencing her to a term of imprisonment. We affirm.

I. Background Facts and Proceedings.

Stockstell met Kendra Spires, who has Down's Syndrome, when they both worked in the cafeteria at the University of Iowa Hospitals. Spires lived independently, but received assistance in financial matters from a Systems Unlimited counselor. In the week the counselor was on vacation, Stockstell repeatedly attempted to sell Spires some costume jewelry, worth about $20. When Spires was reluctant to purchase the jewelry, Stockstell threatened her. Spires wrote three checks to Stockstell for a total amount of $755, and checks for another $630 to three of Stockstell's friends. Stockstell shared in the proceeds of the checks made out to her friends.

Stockstell was charged with extortion. Pursuant to a plea agreement, the State added a charge of theft in the second degree, and Stockstell pled guilty to this charge. The charge of extortion was dismissed. Stockstell was sentenced to a term of imprisonment not to exceed five years. She now appeals.

II. Ineffective Assistance of Counsel.

Stockstell contends she received ineffective assistance from her counsel during plea proceedings. She claims her counsel was ineffective in failing to

consider the merits of a legal defense of diminished capacity due to her mental health problems. She also claims her counsel failed to adequately explain the consequences of a guilty plea. She asserts she was prejudiced by counsel's performance.

Claims of ineffective assistance of counsel are generally preserved for postconviction relief proceedings. *State v. Ceaser,* 585 N.W.2d 192, 195 (Iowa 1998). We ordinarily reverse claims of ineffective assistance of counsel raised on direct appeal in postconviction proceedings to allow full development of the facts surrounding counsel's conduct. *State v. Atley,* 564 N.W.2d 817, 833 (Iowa 1997). Only in rare cases will the trial record alone be sufficient to resolve the claim. *Id.* "Even a lawyer is entitled to his day in court, especially when his professional reputation is impugned." *State v. Coil,* 264 N.W.2d 293, 296 (Iowa 1978); *State v. Kirchner,* 600 N.W.2d 330, 335 (Iowa Ct. App. 1999).

The record in the present case is insufficient to address the issues of ineffective assistance of counsel raised on appeal. There is no record concerning the plea discussions between Stockstell and her attorney. We preserve these issues for possible postconviction proceedings.

III. Sentencing.

Stockstell asserts the district court abused its discretion by sentencing her to a term of imprisonment. She has been diagnosed with bipolar disorder, and states her criminal conduct was due to her psychological problems and irregular Lithium levels. Stockstell also asserts the district court improperly considered other charges against her, which had not yet reached disposition.

Because the challenged sentence does not fall outside the statutory limits, we review the court's sentencing decision for an abuse of discretion. *State v. Cooley,* 587 N.W.2d 752, 754 (Iowa 1998). An abuse of discretion is found only if the court's discretion has been exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Laffey,* 600 N.W.2d 57, 62 (Iowa 1999).

Under section 901.5, a court should exercise its discretion to determine a sentence that "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." Each sentencing decision must be made on an individual basis, and no single factor alone is determinative. *Cooley,* 587 N.W.2d at 755.

In the present case, the district court stated:

> But I have reviewed the record in this particular case, including what your attorney has presented today. And as I look through the Minutes, there's a level of sophistication to what you did in this case that I don't think can be totally explained by your mental illness. And when that's combined with the person that you took advantage of, I think it's a particularly despicable crime that you committed. And despite the setbacks you've had in your life, at some point you've got to start taking responsibility for your own actions.

The court also considered Stockstell's prior criminal record. She had prior convictions for operating while intoxicated, theft, possession of marijuana, and assault. At the time the present crime was committed, Stockstell was on probation for child endangerment. The court specifically stated it was not considering other pending charges against her.

Considering all of the factors in this case, we find the district court did not abuse its discretion in sentencing Stockstell to a term of imprisonment. The fact she was on probation when she committed the present crime shows further probation may not be effective. Furthermore, as the district court pointed out, the nature of the crime is not fully explained by Stockstell's mental health problems.

We affirm Stockstell's conviction and sentence. Her claims of ineffective assistance of counsel should be preserved for postconviction relief.

AFFIRMED.