

IN THE COURT OF APPEALS OF IOWA

No. 5-614 / 95-272

0028459

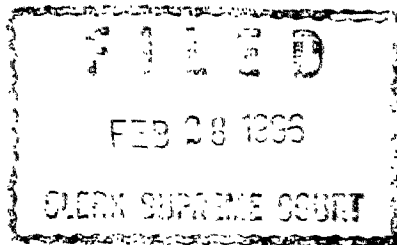
STATE OF IOWA,

Plaintiff-Appellee,

vs.

JOHN McFADDEN,

Defendant-Appellant.



Appeal from the Iowa District Court for Story County, Thomas R. Hronek,
District Associate Judge.

John McFadden appeals from his conviction, following a guilty plea, for
aggravated assault and false imprisonment pursuant to Iowa Code sections 708.1,
708.2 and 710.7 (1995). **AFFIRMED.**

Todd M. Boothroyd of Newbrough, Johnston, Brewer, Maddux & Nadler,
Ames, for appellant.

~~Thomas~~ J. Miller, Attorney General, Thomas G. Fisher, Jr., Assistant Attorney
General, Mary E. Richards, County Attorney, and Ronald Sotak, Assistant County
Attorney, for appellee.

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

SACKETT, P.J.

Defendant-appellant John McFadden was convicted, on his guilty plea, of the crimes of assault in violation of Iowa Code sections 708.1 and 708.2 (1993) and false imprisonment in violation of Iowa Code section 710.7. Defendant contends the trial court abused its discretion in sentencing him without ordering a presentence investigation, in not considering the State's and the victim's recommendation for a sentence, and in not giving sufficient weight to all mitigating circumstances. We affirm.

A sentence will be disturbed by a reviewing court only upon a showing the trial court abused its discretion. *State v. Dicks*, 473 N.W.2d 210, 215 (Iowa App. 1991). A court abuses its discretion when it exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Peters*, 525 N.W.2d 854, 859 (Iowa 1994). Defendant has the burden of showing an abuse of discretion. *State v. LeGrand*, 501 N.W.2d 59, 64 (Iowa App. 1993).

As part of the plea agreement, the State recommended defendant receive a suspended sentence and probation on the assault charge and fourteen days in the county jail on the false imprisonment charge. Defendant asked to serve five days in the county jail. He admitted he had been convicted of theft on four previous occasions. Defendant expressed remorse and testified he had received counseling to help him deal with his anger. The victim sent a letter to the court asking defendant be ordered to participate in counseling and pay a fine for his actions.

Defendant did not request a presentence investigation and none was ordered.

The trial court sentenced defendant to a term of imprisonment not to exceed two years on the assault charge and one year in the county jail on the false imprisonment charge. The sentences were ordered to run concurrently.

Defendant first contends the trial court abused its discretion in this case by not ordering a presentence investigation. Under Iowa Code section 901.2, a presentence investigation may be ordered in a case of aggravated or serious misdemeanor. Defendant advances, because the trial court sentenced him to a prison term, the court should have had the additional information a presentence investigation would have provided and the trial court abused its discretion in not requiring it.

Defendant did not request a presentence investigation prior to sentencing. He, therefore, waived this claim.

Furthermore, the trial court had information concerning defendant's criminal history, his recent employment history, and his attempts to obtain counseling. The trial court had sufficient information to sentence defendant. The trial court did not abuse its **discretion** in not ordering a presentence investigation.

Defendant **next** contends the trial court abused its discretion by not giving more **consideration to the State's and the victim's recommendations**. In making her recommendation, the victim said she did not consider defendant's actions premeditated and she knew he felt remorse.

The court considered these factors, together with the need to deter violence in the community, in passing sentence. The trial court did not abuse its discretion in failing to give more weight to these factors.

Defendant contends the court abused its discretion by not considering other mitigating factors, including his apology and desire for counseling. Defendant contends the court should have given consideration to his employment and family circumstances. There is no evidence of defendant's family circumstances. The court did consider defendant's employment and the importance of his employment. The court considered mitigating factors raised by defendant at the sentencing hearing. The trial court did not abuse its discretion.

Finally, defendant claims the court incorrectly interpreted his motive in committing the offense. We do not find the trial court misinterpreted defendant's motive.

We affirm the sentences given by the trial court. Costs of this appeal are assessed to defendant.

AFFIRMED.