

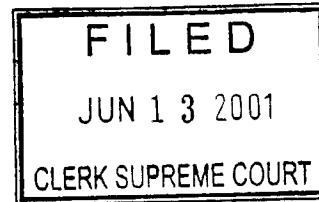
IN THE COURT OF APPEALS OF IOWA

No. 1-272 / 00-0981
Filed June 13, 2001

STATE OF IOWA,
Appellee,

vs.

TODD EUGENE STOCKWELL,
Appellant.



Appeal from the Iowa District Court for Clay County, Patrick M. Carr and Frank B. Nelson, Judges.

Defendant appeals the judgment and sentence entered following his guilty plea to possession of ephedrine with intent to use it as a precursor to méthamphetamine. **AFFIRMED.**

Steven C. Pals of Klay, Veldhuizen, Bindner, De Jong & Pals, P.L.C., Orange City, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Michael L. Zenor, County Attorney, and Michael Houchins and Charles K. Borth, Assistant County Attorneys, for appellee.

Considered by Vogel, P.J., and Zimmer and Hecht, JJ.

VOGEL, P.J.

Todd Eugene Stockwell appeals the judgment and sentence entered following his guilty plea to possession of a substance containing ephedrine with the intent to use it as a precursor to an illegal substance, in violation of Iowa Code section 124.401(4) (1999). Stockwell argues the district court abused its discretion in denying his motion in arrest of judgment and in denying him a suspended sentence and probation. Because we find no demonstrated abuse of discretion by the district court in regard to Stockwell's plea, judgment and sentence, we affirm.

Background Facts and Proceedings. Stockwell was charged with a four-count trial information and, in exchange for dismissal of three of the counts, entered a written guilty plea to possession of ephedrine with intent to use it as a precursor.¹ Stockwell entered both a written and oral guilty plea, but later, during the interview given for the presentence investigation, denied having "anything to do with making methamphetamine." A motion in arrest of judgment was filed, which stated only that this denial was incorporated into the presentence investigation report and prayed that no judgment be entered upon the guilty plea. At hearing, the defendant relied exclusively on his motion and the presentence investigation report. The court declined to allow Stockwell to withdraw his plea, and his motion in arrest of judgment was denied.

¹ Stockwell was also charged with possession of marijuana with intent to deliver, in violation of Iowa Code § 124.401(1)(d) (1999), failure to affix a drug tax stamp in violation of Iowa Code §§ 453B.1(3)(b), 453B.3 and 453B.12 (1999), and child endangerment in violation of Iowa Code § 726.6(1)(a) (1999).

At sentencing Stockwell offered a number of character witness affidavits, given by his family and friends. The district court took a brief recess to "go look at" the affidavits and returned to impose an indeterminate five-year term. Although the court did not specifically refer to the affidavits, it gave several reasons for denying Stockwell a suspended sentence and probation.

Scope of Review. We review the district court's decisions for corrections of errors at law. Iowa R. App. P. 4. A decision to impose a statutorily authorized sentence or deny a request to withdraw a guilty plea are reversed only for a demonstrated abuse of discretion. See *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000) (consideration of sentencing factors); *State v. Blum*, 560 N.W.2d 7, 9 (Iowa 1997) (determining whether plea was voluntary). A court's refusal to allow the withdrawal of a guilty plea will be upheld if the defendant "with full knowledge of the charge against him and of his rights and the consequences of a plea of guilty, enters such a plea understandably and without fear or persuasion." *State v. Speed*, 573 N.W.2d 594, 596 (Iowa 1998) (citations omitted).

Withdrawal of Guilty Plea. On appeal, Stockwell bases his argument on the distinction between specific and general intent offenses and the district court's alleged failure to review the distinction with him. He contends this omission left an element of the offense unexplained, and thus there was a necessary failure in the factual basis for his plea. However, the issue of specific versus general intent was not raised during the hearing on the motion in arrest of judgment and is therefore not preserved on appeal. See *State v. Mann*, 602 N.W.2d 785, 790 (Iowa 1999).

Moreover, the record contains a factual basis for the plea. The minutes of testimony alleged Stockwell was witnessed purchasing items that could be used in the manufacture of methamphetamine, and that a search of his apartment turned up a number of items also used in the manufacturing process, including a pack of pseudoephedrine and a bottle of ephedrine. In his written plea Stockwell acknowledged he had possessed ephedrine with the intent to use it as a precursor to making methamphetamine and requested to enter a guilty plea to the same. During oral plea proceedings, the district court inquired into the validity of the written plea, Stockwell's understanding of the charge, and its consequences, and issues bearing on the knowing and voluntary nature of the plea. In addition, the following colloquy took place:

The Court: On the 18th day of June in 1999 in Clay County, were in you in possession of ephedrine?

The Defendant: Yes, I was.

The Court: Was it your intent to manufacture methamphetamine?

The Defendant: Yes, basically.

The Court: So you are guilty of the offense that you're charged with?

The Defendant: Yeah.

All the foregoing demonstrates to this court a factual basis for Stockwell's knowing and voluntary plea. The district court correctly noted "no reason for withdrawal of the guilty plea is asserted except, apparently, the Defendant may now have changed his mind about the decision he earlier made to plead guilty." As a mere "change of heart" is insufficient to warrant withdrawal of a guilty plea, see *Speed*, 573 N.W.2d at 597-598, we find no abuse of discretion in the district court's ruling.

Denial of Suspended Sentence. Sentencing decisions are cloaked with a strong presumption of validity, and defendants bear a heavy burden in rebutting that presumption. *State v. Sailer*, 587 N.W.2d 756, 759 (Iowa 1998). Stockwell contends the district court abused its discretion in rejecting a suspended sentence because it did not give any weight to the character witness affidavits. In support of this argument he can point only to the absence of the affidavits from the district court's stated considerations for its decision. However, his contention is directly belied by the fact the court took a recess to review the affidavits before pronouncing sentence. Stockwell's mere supposition that the district court nevertheless ignored the affidavits cannot rebut the validity of the court's decision, particularly in light of the sentencing record.

Courts are not required to list every matter reviewed, and it is sufficient if a court states for the record "its reason for selecting the particular sentence." Iowa R. Crim. P. 22(3)(d). In this case the district court cited a number of reasons for declining to suspend Stockwell's sentence, including his criminal history and the fact that two prior probationary periods had apparently not persuaded Stockwell to avoid criminal activity. The range of reasons given are more than sufficient to meet the district court's obligation to support its chosen sentencing option. As Stockwell has failed in his burden to demonstrate the district court's abuse of its sentencing discretion, *State v. Vanover*, 559 N.W.2d 618, 635 (Iowa 1997), we affirm the court's imposition of a prison term.

AFFIRMED.