



IN THE COURT OF APPEALS OF IOWA

CLERK SUPR 1E COURT

STATE OF IOWA,

)

288

Plaintiff-Appellee,

)

Filed February 25, 1987

vs.

)

EDWARD JOSEPH WOODS,

)

6-522
85-1135

Defendant-Appellant.

)

Appeal from the Iowa District Court for Buchanan County (CR 2239)

- James C. Bauch, Judge.

Defendant appeals the district court's sentence imposed upon his guilty pleas to two counts of terrorism and two counts of false imprisonment.

AFFIRMED.

Charles Harrington, Chief Appellate Defender, and Raymond E. Rogers, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Christie J. Scase, Assistant Attorney General; and Allan W. VanderHart, Buchanan County Attorney; for plaintiff-appellee.

Heard by Donielson, P.J., Snell, and Schlegel, JJ.

SCHLEGEL, J.

The defendant appeals the district court's sentence imposed upon his guilty pleas to two counts of terrorism and two counts of false imprisonment.

On January 29, 1985, the defendant informed a co-worker, Cheryl Scott, that he had placed explosives in her parents' home. Later that day, the defendant abducted and threatened to kill Ms. Scott and another co-worker, Benito Tapia. The three people drove around Buchanan County looking for a soda pop and then drove to defendant's residence. Scott told defendant to go inside and get some medication. Defendant did so and Scott and Tapia drove off and reported the incident to the police.

A subsequent police investigation discovered no explosives in Ms. Scott's parents' house. The defendant was apprehended at a relative's house in Missouri on February 7, 1985.

The defendant was accused, by an amended trial information, of two counts of terrorism and two counts of false imprisonment. On May 10, 1985, he filed an application for a competency hearing under Iowa Code section 812.3 (1985). At his competency hearing, the defendant produced three expert witnesses who testified that he was suffering from a severe case of post-traumatic stress disorder (PTSD), a condition that often affects Vietnam veterans, and depression or melancholia. The experts testified that the defendant suffered memory lapses, difficulty concentrating, a numbed response to his environment, rambling and disjointed speech, and suicidal tendencies as a result of these disorders. They concluded that while the defendant probably understood the charges against him, his condition rendered him unable to effectively assist counsel in his defense. While the State's expert witness concurred in the PTSD and depression diagnosis, he concluded that the defendant was able to assist in his own defense. The

trial court determined that the defendant did suffer from PTSD and depression, but ruled that he was competent to stand trial.

Pursuant to a plea agreement, the defendant pled guilty to the terrorism and false imprisonment charges in exchange for the prosecutor's promise to recommend probation, conditioned upon psychiatric treatment. The trial court accepted the defendant's guilty plea, but rejected the probation recommendation and sentenced him to concurrent, indeterminate prison terms of up to five years on the terrorism counts and concurrent one-year prison terms on the false imprisonment counts.

On appeal, the defendant initially raised the argument that he was incompetent to stand trial. Subsequently, the defendant has withdrawn that issue for our review. One issue therefore remains: whether the trial court abused its discretion by sentencing the defendant to imprisonment rather than placing him on probation and ordering psychiatric treatment. The defendant contends that the trial court acted for reasons untenable or unreasonable in rejecting the prosecutor's and the presentence investigation report's probation recommendation. Our scope of review is on assigned error only. Iowa R. App. P. 4.

When choosing an appropriate sentence, the court must examine all pertinent information and determine which sentence will provide for the maximum opportunity for the defendant's rehabilitation and for the protection of the community. Iowa Code § 901.5 (1985). Appellate courts will not find an abuse of discretion in sentencing absent an abuse of discretion. State v. Buck, 275 N.W.2d 194, 195 (Iowa 1979). An abuse of discretion will not be found unless the defendant shows that such discretion was exercised on grounds or for reasons clearly untenable. State v. Hansen, 344 N.W.2d 725, 729 (Iowa Ct. App. 1983). When sentencing has been accorded and exercised, it is subject to limited appellate review. State v. Pappas, 337 N.W.2d 490, 494 (Iowa 1983).

The trial court judge gave the following explanation for his sentencing of the defendant:

THE COURT: Mr. Woods, I have read through the presentence investigation in this case as well as the supplemental report that was filed and I am also familiar with the facts of this case. In assessing and determining the punishment and sentence in a case which sentence is a portion of as well as rehabilitation a deterrent, I note that the victims in this case are very concerned and fearful for their safety. I note that the community attitude in that area is one of very grave concern while community attitude in your area is one for support of you and your family. The presentence investigation indicates that probation would be extremely difficult for them to maintain. In reviewing your record you have no prior criminal activity on your record. You have had a long work employment, satisfactory apparently to your employer up until the time these events occurred. You are married with children with a substantial amount of indebtedness which the community has taken up on your family's behalf by way of a benefit to assist them in meeting their obligations. You have served honorably in Vietnam and it is apparent many of your problems arise from that service in Vietnam for your country. The Court would hope that the report from Toma would have been a little bit more favorable or so have a better prognosis, but it appears that you have made progress there, that you have benefited by being there, but that you have a tendency to go up and down until the most recent supplementary report which indicates a very great concern on their part about you and your behavior. Not behavior that you had exhibited at that point in time but potential for behavior that you may exhibit. I am also aware that you are reluctant for certain terms of probation which has been reflected in the presentence investigation as well. You are eligible for a deferred sentence in this case, but the Court will not grant one given the serious nature of this offense and the potential for harm that was inherent in that offense. The community service is also not appropriate in this matter for reasons that I have previously set out. What the Court tries to do whenever the Court sentences someone is to balance your needs against society's needs in trying to arrive at hopefully a compatible relationship between the two, one which will benefit you most and also which will protect society from potential harm in the future. On balance in reviewing this case, I have chosen not to follow the recommendation of the presentence investigator and of your attorney and also Mr. VanderHart. I would say primarily that I am swayed by the potential for harm that exists either to yourself or other people. And while I sit in judgment of you,

I also have to be concerned for the community at large and the harm that may occur to them.

The trial court weighed all the relevant facts and circumstances in arriving at its sentencing decision. We cannot say that the court's decision was an abuse of its discretion.

AFFIRMED.