FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed September 9, 1977
vs.	)	191/59451
LOREN JAMES ALEXANDER,	)	
Appellant.	)	

Appeal from Hamilton District Court - Albert L. Habhab, Judge.

Defendant appeals the imposition of incarceration rather than probation for assault with intent to commit rape upon a minor child in violation of §698.4, The Code. Affirmed.

Gary J. Groves, of Webster City, for Appellant.

Richard C. Turner, Attorney General of Iowa and Carroll Wood, Hamilton County Attorney, for Appellee.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Defendant Loren James Alexander appeals his sentence of five years incarceration for assault with intent to commit rape upon a minor child in violation of §698.4, The Code. He argues he should have been granted probation. We affirm.

In support of his claim for probation Alexander points to his past work record, the supportiveness of his employer and his neighbors during the pendency of the criminal charge, the stability of his living arrangement with his fiancee and her children, his lack of any prior criminal record, his military record and his sustained cooperation with the prosecution of this case.

The judge, in pronouncing sentence after weighing all these pertinent factors concluded the maximum term of 20 years would be excessive. However, with the record "so abundantly clear that force was used upon this 12 year old girl", he concluded probation would be equally inappropriate.

Alexander argues State v. Banks, 213 N.W.2d 483 (Iowa 1973) and State v. Stevenson, 195 N.W.2d 358 (Iowa 1972) would support the reduction of his sentence to probation. **Banks** involved a 16 year old defendant with a prior assault record whose 20 year reformatory sentence for assault with intent to commit rape was affirmed. **Stevenson** involved an 18 year old defendant with no prior victim-related acts of passion or potentially violent conduct whose rape sentence not to exceed 25 years was reduced on appeal to ten years hard labor at the reformatory.

The fact that Alexander was age 27 and the child was age 12 obviously weighed heavily upon the court's decision to incarcerate. Alexander's cooperativeness and remorse could not completely erase the physician's report relating to the physical condition of the child. The dirt, abrasions, reddened marks on her neck, breasts and genital area indicated some degree of force beyond the non-resistance Alexander contended characterized the attempt.

The exercise of the trial court's discretion is not reviewable; only the alleged abuse of that discretion is reviewable on appeal. State v. Noonan, 246 N.W.2d 236, 237 (Iowa 1976); State v. Warner, 229 N.W.2d 776, 783 (Iowa 1975). By its very nature discretion involves a determination made between competing interests.

Warner, 229 N.W.2d at 783. The trial court rejected the statutory maximum sentence as too severe. The judge wrestled with the sentencing task seeking to accord Alexander leniency and still render justice for the crime. He concluded five years imprisonment was proper. We cannot say his judgment was so severe as to constitute an abuse of his discretion in the matter.

Affirmed.