IN THE COURT OF APPEALS OF IOWA

No. 1-305 / 00-1641
May 23, 2001

FILED
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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DANIEL HOLLIS GENTRY,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, R. David Fahey, Judge.

Defendant appeals from the sentences entered upon his convictions for second-degree burglary and third-degree burglary. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel L. Mullins, Assistant Attorney General, and Patrick C. Jackson, County Attorney, for appellee.

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

HECHT, J.

Daniel Hollis Gentry appeals from the sentences entered upon his convictions for second-degree burglary and third-degree burglary. He maintains the district court abused its discretion in refusing to suspend his sentence and grant probation. We affirm.

I. Factual Background and Proceedings. Gentry and an acquaintance, Darren Nickols, burglarized a business and stole a vehicle. They then broke into a sporting goods store in Burlington, Iowa, and stole several firearms. Gentry served primarily as a lookout while Nickols entered the store and removed the firearms. After the burglary, Nickols and Gentry planned to commit an armed robbery of a convenience store with the weapons taken from the sporting goods store. However, they were arrested before they were able to attempt the planned robbery. While they were out of jail on pretrial release, Gentry and Nickols burglarized several boats at a local marina.

Gentry ultimately pleaded guilty to burglary in the second degree in violation of sections 713.1 and 713.5(1) (1999) based on the sporting goods store incident and burglary in the third degree in violation of sections 713.1 and 713.6A based on the incident at the marina. The district court sentenced him to concurrent terms of incarceration not to exceed ten years on the burglary in the second-degree charge and five years on the third-degree burglary charge.

II. Standard of Review. Our review of sentencing decisions is for the corrections of errors at law. Iowa R. App. P. 4; *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). Where a challenged sentence does not fall outside

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). To show an abuse of discretion, the defendant must demonstrate the court's sentencing decision was based on clearly untenable grounds or reasons, or the court exercised its discretion to an extent clearly unreasonable. *State v. Adams,* 554 N.W.2d 686, 693 (Iowa 1996).

III. Merits. Gentry argues the district court abused its discretion in giving him a sentence of imprisonment rather than probation. Granting probation is a matter of the district court's broad discretion. *State v. Ramirez,* 400 N.W.2d 586, 590 (Iowa 1987). Generally, the district court sentencing decisions are cloaked with a strong presumption in their favor, and, until the contrary appears, the presumption is that the discretion of the court was rightfully exercised. *State v. Hansen,* 344 N.W.2d 725, 730 (Iowa Ct. App. 1983). Gentry points out he was seventeen years old when he committed the offenses, had no prior convictions as an adult, and his involvement in the two burglaries was limited. He further argues he should have received probation because the crimes were offenses against property rather than violent crimes and he had accepted responsibility for his actions.

The district court considered primarily the possibility of rehabilitation and protection of the public when sentencing Gentry to incarceration. The court also noted Gentry had a juvenile record, a history of assaultive behavior, a drug problem, no stable residence or family support, and was a high school drop-out. The court considered that the crimes Gentry committed were premeditated and

that he displayed no recognition of the seriousness of the offenses. The reasons given by the district court for sentencing Gentry to incarceration rather than probation are neither untenable nor unreasonable. It is within the court's reasonable sentencing discretion to decide the defendant and the public would benefit most from a term of imprisonment. *Adams*, 554 N.W.2d at 693. We conclude the district court did not abuse its discretion in ordering incarceration as an appropriate sentencing option. We therefore affirm Gentry's convictions and sentences.

AFFIRMED.