

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

Plaintiff-Appellee,

)

vs.

)

BALDEMAR CAVAZOS,

)

Defendant-Appellant.

)

Filed April 21, 1981

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FILED

APR 21 1981

CLERK SUPREME COURT

Appeal from Louisa District Court.

Ira Morrison, Judge.

Defendant appeals from the sentence imposed on his plea of guilty to possession of marijuana in violation of section 204.401(3), The Code 1977. **AFFIRMED.**

Michael J. Schilling and John Linn, Burlington, Ia., for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Mark Schuling, Assistant Attorney General, for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant, Baldemar Cavazos, appeals from the sentence imposed after his guilty plea to violation of section 204.401(3), The Code. We affirm.

Cavazos was charged by information in July, 1977, with possession of a controlled substance, marijuana, with intent to deliver for a profit. He was found guilty by a jury, but on appeal his conviction was reversed and remanded by the supreme court in a per curiam opinion filed January 23, 1980. In further proceedings conducted on March 25, 1980, Cavazos pled guilty to possession of marijuana, a serious misdemeanor. He was sentenced on April 4, 1980, to six months in the county jail and was ordered to pay a fine of \$1,000. He appeals that sentence. Our review is on error assigned. Iowa R. App. P.4.

I. Cavazos asserts the sentencing court's abuse of discretion in imposing the maximum sentence. A sentence within the statutory maximum will be upheld unless an abuse of discretion is shown. State v. Inger, 292 N.W.2d 119 (Iowa 1980). The record reveals the sentencing court's consideration of several factors concerning Cavazos himself and the offense involved. The record does not reveal an untenable or unreasonable basis for the court's imposition. See State v. Buck, 275 N.W.2d 194 (Iowa 1979). A sentencing court's discretion is not bridled by the possibility of a differing opinion from the reviewing court as to a sentence proper to the situation. Without a clear showing of abuse, this court can only uphold the sentence. We find no abuse in this case.

II. Cavazos argues the sentencing court failed to state its reason for the sentence imposed pursuant to Iowa R. Crim. R. 22(3)(d). The offense occurred in mid-1977, prior to the rule. Iowa case law at that time expressed the preference to written articulation of rationale of the imposition, but such was not mandated. State v. Horton, 231 N.W.2d 36, 39 (Iowa 1975). Nothing appears in the record to indicate defendant's request to proceed under the new criminal provisions. Nonetheless, the sentencing court appears to have applied the provisions of the Code of 1979 in sentencing. In any event, the entered judgment and record reveals the court's consideration of many, valid factors and its view that probation, which Cavazos desired, was not warranted in light of rehabilitation possibilities and the need to protect the community. We find the written record complies with Iowa law as applied by the sentencing court.

We, therefore, affirm the sentence imposed.

AFFIRMED.