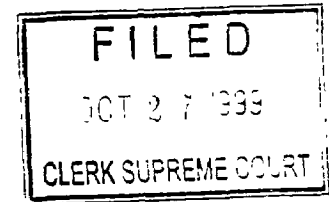


IN THE COURT OF APPEALS OF IOWA

No. 1999-283 (9-513) / 98-2072

Filed October 27, 1999



**STATE OF IOWA,
Plaintiff-Appellee,**

vs.

**TERRI A. PETERSON,
Defendant-Appellant.**

Appeal from the Iowa District Court for Adams County, Richard D. Morr,
Judge.

Terri Peterson appeals from the sentence entered upon her guilty plea to second degree theft in violation of Iowa Code sections 714.1 and 714.2(2) (1997). She contends the district court abused its discretion in sentencing her to a prison term.

AFFIRMED.

Mary L. McGee, Des Moines, for appellant.

**Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney
General, and Earl Hardisty, County Attorney, for appellee.**

Heard by Sackett, C.J., and Zimmer and Miller, J.J.

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MILLER, J.

Appellant Terri A. Peterson appeals from the sentence imposed following her plea of guilty to a charge of theft in the second degree. She claims that the trial court abused its discretion in sentencing her to a term of imprisonment rather than granting a suspended sentence and probation. Finding no abuse of discretion, we affirm.

On August 24, 1998, Peterson entered a plea of guilty to theft in the second degree in Adams County. The charges arose from her employment at Casey's General Store during the last one-half of 1997 and the first one-half of 1998. At sentencing she acknowledged taking merchandise and allowing others to take merchandise with a value of five thousand eight hundred ten dollars and sixty cents without paying. She had been convicted of theft in 1994 in Adams County and had again been convicted of theft in 1997 in Union County. During the time things were taken from Casey's, Peterson was on unsupervised probation for her 1997 Union County theft conviction. On October 19, 1998, the trial court sentenced Peterson to a term of imprisonment not to exceed five years. Peterson appeals the sentence, claiming the trial court abused its discretion in ordering imprisonment rather than a suspended prison sentence with supervised probation and placement in a residential correctional facility as recommended by the Department of Adult Correctional Services.

Our review is for the corrections of error at law. Where, as here, a defendant does not assert that the imposed sentence is outside the statutory limits, the sentence will be set aside only for an abuse of discretion. An abuse of discretion is found only

when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable.

State v. Thomas, 547 N.W.2d 223, 225 (Iowa 1996).

Reasoned exercise of discretion is the hallmark of any proper sentencing procedure. *State v. Cooley*, 587 N.W.2d 752, 754 (Iowa 1998). The trial court's sentencing duty has been summarized this way:

The trial court and we on review should weigh and consider all pertinent matters in determining proper sentence, including the nature of the offense, the attending circumstances, defendant's age, character and propensities and chances [for] reform. The courts owe a duty to the public as much as to defendant in determining a proper sentence. The punishment should fit both the crime and the individual.

State v. Hildebrand, 280 N.W.2d 393, 396 (Iowa 1979). Each sentencing decision must be made on an individual basis, and no single factor alone is determinative.

State v. Johnson, 513 N.W.2d 717, 719 (Iowa 1994). The Code of Iowa, section 901.5, provides in pertinent part:

The court shall determine which [sentencing option] is authorized by law for the offense, and of the authorized sentences, which of them or which combination of them, in the discretion of the court, will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.

Peterson argues that the trial court failed to consider the suspended sentence, probation and residential correctional facility placement recommended in the presentence investigation report. The transcript of the sentencing hearing does not

support her claim. The court referred to the presentence investigation report, and repeatedly referred to information contained in it. The court very carefully discussed the pertinent matters mentioned in *Hildebrand*, other factors that section 907.5 requires it to consider when considering probation, and other matters as well. It pointed out that in this type of case it usually considered deferral of judgment, deferral of sentencing, or probation. It concluded that while the defendant did have a good chance at rehabilitation, prison was appropriate for a person who was on probation for theft when she committed the theft in this case.

The trial court was aware that this was the defendant's third theft conviction. It considered the defendant and her characteristics and needs, the crime and circumstances surrounding it, and the message its sentencing decision would send to the public. The record is clear that it considered sentencing options, and after careful consideration of all relevant factors imposed the sentence that it felt would provide maximum opportunity for the rehabilitation of the defendant and for the protection of the community from further offenses by the defendant and others. We find no abuse of discretion.

Peterson further urges that by not following the recommendations of the department of correctional services the purpose of the presentence investigation and report were defeated. The purpose of the presentence investigation and report is to "provide the court pertinent information for purposes of sentencing and to include suggestions for correctional planning for use by correctional authorities subsequent

to sentencing.” The Code of Iowa, section 901.2(3). Peterson in essence suggests that the court is bound by the recommendation made by the department of correctional services in the presentence investigation report. This position is untenable, as to accept it would remove from the trial court the discretion vested in it by law.

AFFIRMED.