IN THE COURT OF APPEALS OF IOWA

No. 1-217 / 00-1708
Filed May 9, 2001

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MARK STEPHEN JENNINGS,
Defendant-Appellant.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott, District Associate Judge.

The defendant appeals from the judgment and sentence entered following his guilty plea to operating while intoxicated, third offense, in violation of Iowa Code section 321J.2 (1999), and being a habitual offender, in violation of section 902.8. **AFFIRMED.**

John E. Billingsley of Walker, Knopf & Billingsley, Newton, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Steve Johnson, County Attorney, and Michael K. Jacobsen, Assistant County Attorney, for appellee.

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

HECHT, J.

Mark Jennings appeals from the judgment and sentence entered following his guilty plea to operating while intoxicated, third offense, in violation of Iowa Code section 321J.2 (1999), and being a habitual offender, in violation of section 902.8. We affirm.

I. Factual Background and Proceedings. On March 10, 2000, a sheriff's deputy observed Jennings swerving on the roadway and arrested him for operating while intoxicated ("OWI"). A subsequent intoxilyzer test revealed his blood alcohol level was .188. Jennings ultimately pleaded guilty to OWI, third offense, and stipulated to being a habitual offender. The district court sentenced Jennings to a term of incarceration not to exceed fifteen years and fined him $2500.

II. Standard of Review. We review the sentence imposed by the district court for errors at law. *State v. Grandberry,* 619 N.W.2d 399, 400 (Iowa 2000). Sentencing decisions are cloaked with a strong presumption in their favor. *See State v. Loyd,* 530 N.W.2d 708, 713 (Iowa 1995).

III. Merits. On appeal, Jennings argues the district court erred by only considering the protection of the community when sentencing him to a term of incarceration and did not consider his opportunity for rehabilitation. Iowa Rule of Criminal Procedure 22(3)(d) requires the district court to state its reasons for selecting a particular sentence on the record. *State v. Oliver,* 588 N.W.2d 412, 414 (Iowa 1998). The district court 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 of his reform. *State v. Laffey*, 600 N.W.2d 57, 62 (Iowa 1999). The court also must determine which sentence "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." Iowa Code § 901.5.

The record reveals at the time of sentencing in the present matter, Jennings had accrued nine alcohol related convictions, eight of them for OWI. His sentences for the prior offenses had included probation and incarceration. During the sentencing hearing, the district court noted Jennings had a positive employment record with his employer and it had considered the information contained in the presentence investigation report. The report contained information about his work history, his financial responsibility, and his age, and recommended a short term of incarceration followed by a residential OWI program. Although the district court expressed serious concerns regarding the safety of the community and society, the court also remarked on Jennings's failure to address his addiction and his continued behavior of driving while intoxicated. The court's reference to the defendant's recidivism demonstrates the court's awareness rehabilitation had not resulted from the sentencing options previously imposed. The district court noted only a term of incarceration seemed likely to deter Jennings from repeatedly driving drunk and protect the public from his repeat offenses. Contrary to Jennings's assertions, the district court did consider his chance for rehabilitation. After our review of the record, we conclude the district court considered the appropriate factors when sentencing

Jennings and did not abuse its discretion by sentencing him to a term of incarceration.

AFFIRMED.