

IN THE COURT OF APPEALS OF IOWA

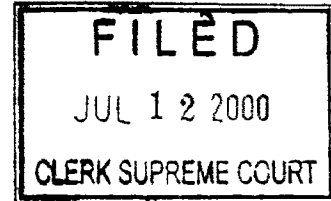
No. 0-261 / 99-1216

Filed July 12, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ARNIE MARVIN SANDVICK,
Defendant-Appellant.



Appeal from the Iowa District Court for Iowa County, Patrick R. Grady,
Judge.

Defendant appeals from the judgment and sentence entered upon a jury verdict finding him guilty of domestic abuse assault causing injury in violation of Iowa Code sections 232.6, 708.2A(1), and 708.2A(2)(b) (1997). He contends (1) he should have been allowed to present evidence of his mental illness and disposition pursuant to Iowa Rule of Criminal Procedure 10(11)(d), (2) the evidence was insufficient to find him guilty of the charged offense, and (3) the trial court abused its discretion in sentencing him. **AFFIRMED.**

Anders L. Johnson, Marengo, for appellant.

Thomas J. Miller, Attorney General, Roxann M. Ryan, Assistant Attorney
General, and Lewis McMeen, County Attorney, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

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MILLER, J.

Defendant Amie Sandvick appeals the judgment and sentences entered after a jury found him guilty of domestic abuse assault causing bodily injury. He contends 1) the trial court erred in excluding his own testimony as to mental illness; 2) there was insufficient evidence of bodily injury; and 3) the trial court abused its discretion in imposing sentencing. We affirm.

This case involves a domestic abuse assault that took place in November 1998. Briefly stated, a reasonable jury could find the following. Sandvick went to the residence of his former wife, Linda, at seven a.m. to pick up some speakers for his stereo. After entering the garage, he found several beer cans in black bags. He went to the front door to confront her. When she opened the door, he barged into the house, hitting her in the face with the door. She told him to leave or she would call the police. He refused, and she called 911. He ripped the telephone out of the wall, and threatened to kill her. She tried to run, but he grabbed her by the hair and threw her on the floor. She screamed, and he hit her on the face once or twice. Their eight-year-old daughter witnessed the incident, and pleaded with him not to kill her mom.

Sandvick was subsequently charged with domestic abuse assault causing bodily injury, in violation of Iowa Code sections 708.2A(1) and 708.2A(2)(b). The jury returned a guilty verdict. Sandvick was sentenced to ninety days in jail with all but five days suspended, was placed on supervised probation for one year, was sentenced to pay a fine of \$250 plus surcharge, and was ordered to enroll in and complete a batterer's education program. The sentencing order extended for one year a previously-issued no contact order. At the sentencing hearing the

court orally ordered as a condition of probation that Sandvick be current on his medication for his mental illness. Sandvick appeals.

Sandvick first contends the trial court erred in not allowing him to testify as to his mental illness at the time of the crime. Sandvick has failed to preserve error on this issue. There is an indication in the sentencing transcript Sandvick's attorney told the court in a pre-trial conference he intended to have Sandvick testify as to his mental illness and the court declined to allow the testimony during trial, as irrelevant. However, we find no record of this purported ruling, or any reasons given for the ruling. (The trial court did allow Sandvick to testify as to his mental illness during the sentencing hearing.) Sandvick made no offer of proof prior to or during trial. Further, Sandvick did not provide a bill of exceptions pursuant to Iowa Rule of Criminal Procedure 23.1 or a statement of the proceedings pursuant to Iowa Rule of Appellate Procedure 10(c).

The burden of making an offer of proof to preserve error is on the party that urges the evidence should have been admitted. *See State v. Gartin*, 271 N.W.2d 902, 909 (Iowa 1978). An offer of proof serves both to give the trial court a more adequate basis for its evidentiary ruling and to make a record for appellate review. *State v. Lange*, 531 N.W.2d 108, 114 (Iowa 1995). An offer of proof provides a record because the reviewing court cannot predicate error upon speculation as to what testimony would have come in the record had the objection not been sustained. *Id.*

Sandvick was charged with and convicted of a general intent crime. *See State v. Ogan*, 497 N.W.2d 902, 903 (Iowa 1993) (holding assault causing bodily injury is a general intent crime). A diminished responsibility defense applies only

to specific intent crimes. *State v. McVey*, 376 N.W.2d 585, 587 (Iowa 1985). We cannot determine whether evidence of Sandvick's mental illness was intended to support a "diminished responsibility" defense or a "legal insanity" defense. See *State v. Nicholson*, 402 N.W.2d 463, 465 (Iowa App. 1987) (explaining an "insanity" defense requires a showing the defendant was incapable of knowing the nature and quality of the act committed, while a "diminished responsibility" defense relates only to the defendant's inability to form the specific intent required to commit a crime). We have no way of knowing whether the evidence Sandvick wished to present at trial was the same as that presented at sentencing, and no way of knowing whether he intended the evidence to support an insanity defense or a legally unavailable diminished responsibility defense. Sandvick has not preserved error on this claim of trial court error.

(Although not necessary to our decision on Sandvick's first claim, we note he did in fact testify about his mental illness. At one point he testified, "And music seems to sooth me because I'd had problems with depression." At another point he testified, "Well, I have an emotional depressant problem that I'd just went to the hospital for.")

Sandvick next contends there was insufficient evidence for a jury to find a "bodily injury" occurred. A party cannot effectively challenge the sufficiency of the evidence for the first time on appeal. *State v. Dickerson*, 313 N.W.2d 526, 529 (Iowa 1981). This contention was not raised by way of motion for judgment of acquittal in the trial court and cannot be urged for the first time here. Iowa R. Crim. P. 18(8); *State v. Grosvenor*, 402 N.W.2d 402, 406 (Iowa 1987).

Sandvick's final contention on appeal is the trial court abused its discretion in sentencing him, arguing because he has no prior record he should have only been sentenced to the "statutory minimum" of two days in jail, without any suspended time or probation. The record does not support his contention.

Our review is for the corrections of error at law. Iowa R. App. P. 4. Sentencing decisions of the district court are cloaked with a strong presumption in their favor. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). 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. *Id.* 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. *Id.*

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). Iowa Code 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.

At the sentencing hearing, Sandvick testified he was "bipolar depressant," and had earlier been treated for deep depression and suicidal thoughts. He stated that at times he has fits of rage, yells loudly and gets very upset, then usually goes to bed and may sleep for two days. He further testified his ex-wife, divorce and surrounding visitation issues trigger his anger. He had just been released from a psychiatric hospital one day prior to the incident that gave rise to this charge.

In giving reasons for its sentencing decisions, the district court stated:

Mr. Sandvick, I think we have a very perplexing problem here. Obviously there's a lot of continual anger and conflict over your divorce that resulted in us coming to court before a jury. And regardless of what your mental health diagnosis is, there has to be something that you're going to have to do to get control of the situation. I just have a hard time accepting that you have this diagnosis, which I'm certainly not doubting, and that it is supposed to excuse your actions. But you're not doing what you need to do to be able to control that illness, and that creates a problem, especially because you tell me that you want to get rid of the conflict and you want to be able to spend time with your daughter. But by not taking care of your illness or controlling your anger, you're exposing your daughter to that anger and to the violence it brings out. And that's not good for any child. And it not only caused her to witness your anger this time, but she had to come in and tell a bunch of strangers about it. That's doubly bad for her.

....

... Given what you've told me about yourself, I'm not sure why you should be having a child in your care if your illness is not under control.

This statement shows the district court took into consideration the serious nature of Sandvick's assault on his ex-wife, the devastating effect the assault and subsequent trial had on his eight-year old daughter, Sandvick's failure to accept

responsibility for his actions, and the high danger of recurrence due to his failure to control his illness by taking necessary medication. Further, in its written "Judgment and Sentence" the court stated the reasons for the sentence included "[t]he nature of the offense, the need for protection of the community, and Defendant's need for supervision." The district court gave cogent reasons for the sentence it selected and imposed, and acted well within its discretion. We find no abuse of discretion.

AFFIRMED.