IN THE COURT OF APPEALS OF IOWA

No. 0-417 / 99-1462
Filed August 30, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOSEPH SETH MARTINEZ,
Defendant-Appellant.

FILED
AUG 30 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Hardin County, Peter B. Newell, Judge.

Joseph Seth Martinez appeals from the sentence following his plea of guilty to a charge of criminal mischief in the third degree. He contends the district court abused its discretion in sentencing him to a two-year prison term. **AFFIRMED.**

Brandon Adams of Frerichs Law Office, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Cristen C. Odell, Assistant Attorney General, and Richard N. Dunn, County Attorney, for appellee.

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

MILLER, J.

Defendant Joseph Martinez appeals from the sentence imposed following his plea of guilty to a charge of criminal mischief in the third degree, contending the trial court abused its sentencing discretion by sentencing him to a term of imprisonment. We affirm.

In April 1999, while at the Eldora Boy's State Training School, Martinez verbally assaulted a youth service worker who was delivering his evening meal. A board was placed in Martinez's window in order to block the noise, but Martinez became even more aggressive. When another worker opened the cell door in order to talk with Martinez, Martinez charged out the door and punched the worker three or four times in the head. Martinez was eventually restrained.

On June 2, 1999, Martinez was charged in juvenile court with the assault of the worker and criminal mischief in the second degree, due to property Martinez had destroyed or damaged between April 1998 and April 1999. The State simultaneously filed an Application for Waiver of Juvenile Court Jurisdiction. A plea agreement was reached, wherein Martinez agreed not to contest the waiver hearing and to plead guilty in adult court to criminal mischief in the third degree only. Martinez subsequently pled guilty in district court to criminal mischief in the third degree. The court sentenced him to an indeterminate term not to exceed two years and a suspended five hundred dollar fine. Martinez appeals the sentence only.

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

Id. at 754-55 (quoting *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.

Iowa Code § 901.5 (1997).

Martinez contends the trial court abused its sentencing discretion in three ways. He first contends the court failed to give any real consideration to the required factors, and if it had, the court would have seen a seventeen year old child with a history of psychiatric problems who had spent the last five years of

his life placed outside his home with varying amounts of success at rehabilitation. The district court stated on the record it received a copy of the presentence investigation, and a psychiatric evaluation and a staffing presentation from the State Training School. After making certain the parties had all the information that it did, the trial court heard the State's oral sentencing recommendation, a lengthy statement from defense counsel urging probation, and a statement by the defendant similarly requesting probation. After hearing arguments, the district court carefully noted:

> More than what we are here for is more than what is just good for you, but what is appropriate for your behavior. And certainly . . . there needs to be some type of punishment for your behavior. And I think considering the types of services that you have been offered in the past through Juvenile Court, I think that the only appropriate punishment would be to sentence you to prison.
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> ***
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> My thought is, Joseph, that eventually, hopefully, you will do your time and get out and be done with this system, and then you can go on and lead your life. But I don't think it's appropriate to place you on probation. You might make it but I don't think so. . . .
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> There has never been anything wrong with you intellectually. You have the intelligence to make a life for yourself. There is nothing wrong with you physically. You have no chemical imbalance. You have no mental diseases. It's just been a matter of attitude, and that's just something that we don't have control over. That is something you have to make a decision about.

This statement shows the district court was aware of and carefully considered its options. Together with the court's reference to the presentence investigation report and the two other documents it shows the court considered the defendant's age, prior attempts to rehabilitate the defendant, the prospect of success if probation were granted, the ability of Martinez to become a productive and law-abiding citizen, and the need to protect the public. The presentence

investigation report includes a reference to a psychiatrist's opinion, which indicates Martinez's behavior was not the product of "depression, psychosis, anxiety or any other typical and treatable mental disorder," contrary to Martinez's assertions on appeal. Instead, his behavior was the product of

> a very basic difference in the way that he thinks about himself and the world around him. When the defendant commits a violent outburst towards others it is not a product of uncontrollable emotions or delusional thoughts, but purposeful actions designed to hurt others. He feels fully justified in his attacks and medication did nothing to stop such behavior.

There is no merit to Martinez's contention the district court did not give any real consideration to the required factors.

Martinez next contends the district court abused its sentencing discretion by revealing a bias against him, specifically pointing to a statement the court made at the waiver/plea hearing:

> Mr. Martinez, you have had problems, I think, in the past. You've escaped from places....
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> I think you also understand, sir, that you have a pretty terrible history in Juvenile Court and in front of me in both Bremer County and now here in Hardin County. It seems to me that hardly a week went by where I didn't receive a report on you from the State Training School, and they indicate in their waiver report that you have been one of the worst placements they have ever had there.
>
> I'm saying this because I want you to understand that any kind of pretrial services is pretty much going to seal your fate as far as where you're going to go at the time of sentencing.

This statement does not reveal any bias against the defendant. First, the statement was made for the purpose of encouraging Martinez to be law-abiding while awaiting sentencing, and not as part of the court's stated reasons during the sentencing hearing. Further, if the court had made the same comments at sentencing they would have been proper in considering Martinez's history of prior

placements and chances of rehabilitation. The court displayed no improper bias against Martinez.

Finally, Martinez contends the court abused its sentencing discretion because, he contends, the court promised him at the waiver/plea hearing that if he maintained a lawful and productive lifestyle while awaiting sentencing, the court would grant him probation. No such promise is revealed in the record. In fact, the court only promised Martinez a *chance* of receiving probation if he "behave[d]" himself between the waiver/plea hearing and the sentencing hearing. This statement by the court was made prior to its receipt and consideration of the presentence investigation and psychiatric reports. Therefore, although Martinez did "behave" himself prior to sentencing, the court did not abuse its discretion in sentencing him to a two-year prison sentence.

The district court acted well within its discretion in rejecting a request for probation, and gave cogent reasons for the sentence it selected. We therefore affirm.

AFFIRMED.