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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 5-671 / 94-2137

001127

STATE OF IOWA,

Appellee,

vs.

SETH THOMAS OWEN,

Appellant.

Appeal from the Iowa District Court for Johnson County, John R. Sladek, District Associate Judge.

Seth Owen appeals the judgment and sentence entered upon his conviction, following a guilty plea, of domestic abuse assault causing injury. **AFFIRMED.**

Dennis A. Bjorklund, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, J. Patrick White, County Attorney, and Janet Lyness, Assistant County Attorney, for appellee.

Heard by Hayden, P.J., and Cady and Huitink, JJ.

HAYDEN, P.J.

Seth Owen was charged with the offense of domestic abuse assault causing injury. Owen and the State entered into a plea agreement whereby the State agreed to recommend Owen be incarcerated for two days and participate in a batterer's education program. Owen signed the written plea, however, the county attorney did not sign the document. Despite the plea agreement, at sentencing, the State recommended Owen be incarcerated for 180 days with 135 days suspended. The State also recommended Owen be placed on level two probation for a period of one year, be required to attend a batterer's education program, and pay a fine of $250 plus surcharge and court costs. The court and State acknowledged this was not the recommendation provided for in the written plea agreement. Owen was given the opportunity to file a motion in arrest of judgment. After Owen discussed the matter with his attorney, he decided to proceed with sentencing.

At the sentencing hearing, Heather Beardsley testified about the injuries she sustained as a result of Owen's assault of her. She stated she had a cracked rib, lots of bruises, and hurt her spine. Beardsley further stated the incident of assault lasted two hours. In exceeding the recommendation of the State, the district court ordered Owen be incarcerated for 180 days with one-day credit for time served and 120 days suspended. The court further ordered Owen be placed on level two probation for two

years and complete a batterer's education program In articulating the reasons for imposing the sentence, the court stated,

> Mr Owen, I've had a chance to review the Minutes of Testimony filed with the Trial Information. One of the things that bothers me about this was a repeated attack over a lengthy period of time as opposed to a verbal argument that ended in a display of physical restraint Because of the length of the time that the attack took over and certainly because of the injuries that resulted in that attack, the Court would order that you be incarcerated in the Johnson County Jail for a period of 180 days

Owen appeals He asserts the sentencing court abused its discretion by failing to consider relevant factors such as his family situation, employment, criminal history, and ability to reform Owen also contends the court's stated reasons for imposing the sentence were too general and the court placed undue reliance on Beardsley's testimony at the sentencing hearing. Lastly, Owen argues his counsel was ineffective for (1) failing to obtain the county attorney's signature on the written plea agreement, (2) failing to adequately cross-examine Beardsley or ask for a continuance; and, (3) allowing him to proceed with sentencing once the State indicated it would not follow the sentencing recommendation contained in the written plea.

I. Sentencing.

Decisions of a sentencing court will not be disturbed absent an abuse of discretion *State v. Nearly*, 470 N.W 2d 27, 29 (Iowa 1991); *State v. Thomas*, 520 N W.2d 311, 313 (Iowa App. 1994). Abuse will be found only when the discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly

unreasonable *Neary*, 470 N W 2d at 29 The district court is accorded the same broad discretion even when it imposes the most severe sentence available *State v. Farnum*, 397 N W 2d 744, 749 (Iowa 1986) ("A sentence within the statutory limits--even if it is the most severe sentencing alternative--will be set aside only for an abuse of discretion ")

With respect to sentencing, Owen first claims the statement of reasons articulated by the trial judge was inadequate Iowa Rule of Criminal Procedure 22(3)(d) provides the district court must state on the record its reason for selecting a particular sentence. *State v. Garrow*, 480 N W 2d 256, 259 (Iowa 1992) The purpose of rule 22(3)(d) is to allow a reviewing court to determine whether there has been an abuse of discretion *Id.* The statement of its reasons satisfies rule 22 if it recites reasons sufficient to demonstrate the exercise of discretion and indicates those concerns which motivated the court to select a particular sentence. *Id.* We have held the court's reasons are sufficient to satisfy rule 22(3)(d), even though they were somewhat "terse and succinct," so long as brevity of the court's statement does not prevent review of exercise of trial court's sentencing discretion. *See State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989).

We determine the district court's statement of its reasons for imposing the challenged sentence was sufficient to satisfy the requirements of rule 22(3)(d) The court's recited reasons are sufficient to allow us to determine whether there has been

an abuse of discretion Although the district court's statements are "terse and succinct," we do not believe their brevity prevents our review of the district court's exercise of sentencing discretion *See Garrow*, 480 N W 2d at 260 Nonetheless, we remind sentencing judges of the importance of giving full, articulated reasons for its decisions A detailed explanation of the reasons behind a sentencing decision ensures proper review and may also eliminate unnecessary appeals By the same token, we encourage both the prosecution and defense counsel to request a statement of reasons at the time of sentencing whenever a sentencing judge neglects to give a detailed explanation of its reasons

Next, Owen claims the district court abused its discretion by failing to consider all relevant factors in its sentencing decision. The law is well settled, each sentencing decision must be made on an individual basis, and no single factor is alone determinative *State v. Johnson,* 513 N.W.2d 717, 519 (Iowa 1994), *State v. Ramirez*, 400 N.W 2d 586, 590 (Iowa 1987). The court's obligation to consider all relevant factors, however, does not preclude the judge from giving more weight to certain factors. ***State v. Wright***, 340 N.W 2d 590, 593 (Iowa 1983).

We determine the district court did not impermissibly base its decision on one factor alone. Viewing the court's statements in context, we believe it considered the following reasons in rejecting the State's recommendation and imposing a more severe sentence. the seriousness of the offense; the attending circumstances of the crime;

nature of the offense, the severity of the injury, and, the impact of the crime upon the victim All are proper sentencing objectives *State v. Post*, 286 N W 2d 195, 204 (Iowa 1979) (seriousness of the offense is permissible factor), *Johnson*, 513 N W 2d at 719 (nature of the offense and attending circumstances are among the permissible factors), *Payne v. Tennessee*, 501 U S 808, 825, 111 S Ct 2597, 2608, 115 L Ed. 2d 720, 735 (1991) ("Victim impact evidence is simply another form or method of informing the sentencing authority about the specific harm caused by the crime in question, evidence of a general type long considered by sentencing authorities.") The district court chose to place more weight on these four factors than upon the factors urged by Owen, as is within its discretion. *See Wright*, 340 N.W.2d at 593.

Lastly, Owen claims the district court unduly relied upon the victim's testimony and was prejudiced by her statements at the sentencing hearing. We disagree As previously noted, the United States Supreme Court has held the impact on the victim is a permissible factor to consider in exercising sentencing discretion *See Payne*, 501 U S. at 825, 111 S. Ct. at 2608, 115 L. Ed 2d at 735 (victim impact evidence is properly considered by sentencing authorities). The district court did not base its sentencing decision solely on the impact on the victim The court also considered the seriousness of the offense and the attending circumstances. As such, the district court did not unduly rely on the victim's testimony

In summary, we find there was no violation of rule 22(3)(d) Furthermore, the sentence fit the defendant and the circumstances, and no single factor was alone determinative in the court's decision As such, the district court did not abuse its discretion

II. Ineffective Assistance of Counsel.

Ordinarily, our review of postconviction relief proceedings is for errors of law *Hinkle v. State*, 290 N W 2d 28, 30 (Iowa 1980). However, when a postconviction petitioner asserts violation of constitutional safeguards--such as ineffective assistance of counsel--we make our own evaluation based on the totality of the circumstances. This is the equivalent of de novo review *Id.*

Where the record on direct appeal is not adequate to permit us to resolve the issue, we preserve the defendant's claim for postconviction proceedings so the facts may be so developed. *State v. Koenighain*, 356 N.W 2d 237, 238 (Iowa App 1984) This also gives the allegedly- ineffective attorney the opportunity to explain his or her conduct *State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978). We conclude there is an inadequate record for us to adjudicate defendant's claim without counsel's explanation for his/her conduct. We therefore preserve defendant's ineffective assistance of counsel claim for a later proceeding.

AFFIRMED.