FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Appellee,

v.

ROBERT OSCAR MAURER,

Appellant.

Filed November 10, 1977

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59891

Appeal from Clinton District Court - C. H. Pelton, Judge.

Defendant appeals trial court's sentence of seven years in the penitentiary for violation of section 713.1, The Code, asserting abuse of discretion, cruel and unusual punishment, and denial of equal protection. Affirmed.

John J. Wolfe, Jr., and Thomas R. Mayer, of Clinton, for appellant.

Richard C. Turner, Attorney General, and G. Wylie Pillers, Clinton County Attorney, for appellee.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

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PER CURIAM

Defendant, Robert Oscar Maurer, appeals his sentence of seven years in the penitentiary for violation of section 713.1, The Code. This is his first felony conviction and the sentence imposed is the maximum permitted. Defendant attacks the sentence on three different grounds.

I. Discretion.

Defendant claims that a sentence of incarceration for his first felony offense, based upon trial court's belief that defendant was in need of mental health treatment, is an abuse of discretion. State v. Peckenschneider, 236 N.W.2d 344 (Iowa 1975) prescribes the standards for sentence review.

Section 789A.1, The Code, establishes criteria for determination of a proper sentence. The goal is to "provide maximum opportunity for the rehabilitation of the defendant and protection of the community. . . ." In seeking to accomplish this, the court shall examine any "factors" which are "appropriate." Defendant's mental condition was the deciding factor in trial court's sentence. We cannot say that such a factor was not appropriate. The sentence was within trial court's statutory prerogatives, and was based upon permissible considerations.[1] There was no abuse of discretion.

II. Cruel and Unusual Punishment.

Defendant next contends he was imprisoned because of his mental condition, and therefore the sentence violated the eighth and fourteenth amendments to the Federal Constitution. His reliance upon Robinson v. California, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962) is misplaced. In **Robinson** the Supreme Court held that a state statute which made the status of drug addiction a crime inflicted a cruel and unusual punishment. That is not what has occurred here. Defendant's mental condition may be the factor which caused trial court to refuse probation, and order imprisonment. Defendant's mental condition, however, has not caused his punishment. It has merely governed trial court's choice of which punishment is more appropriate.

[1] Cf. State v. Drake, 224 N.W.2d 476, 479-80 (Iowa 1974); see State v. Johnson, 196 N.W.2d 563, 571 (Iowa 1972); see also § 789A.4, The Code, discussed at note 2, infra.

In order to agree with defendant's contention, we would have to hold that the sentencing judge could not consider the prisoner's mental health in determining judgment. Such a decision would withhold from the judge's consideration a significant factor affecting defendant's rehabilitation, and the safety of the community.[2]

III. Equal Protection.

Defendant argues he has been denied equal protection of the law because the sentence which trial court ordered was based upon the belief that defendant needed mental health treatment, and cites two Supreme Court decisions[3] in support of this contention. They are inapposite. Each involved commitment to a mental health facility. The difficulties which might exist if defendant had been so committed do not arise here. Defendant is not within the class of persons being committed to mental institutions. His situation is, therefore, substantially different from that of the individuals involved in the cases which he cites. He is part of the class of persons who have been properly convicted of a felony and sentenced to a term in the penitentiary. As such, he has suffered no invidious discrimination. He has been sentenced in the same manner as all other members of his class: by a trial judge in the exercise of his sound discretion. Trial court determined that defendant, while neither insane nor incompetent, was in need of the mental health treatment which can be made available to penitentiary inmates. This was a sufficient rational basis for ordering incarceration.[4] We find no error.

AFFIRMED.

[2] In this regard, consider § 789A.4, The Code, which provides that state mental institutions are obliged to provide relevant information for use in presentence reports, and allows the court to order psychiatric evaluations, for inclusion in such reports.

[3] Jackson v. Indiana, 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972); Baxstrom v. Herold, 383 U.S. 107, 86 S.Ct. 760, 15 L.Ed.2d 620 (1966). Two other cases assist our understanding of **Jackson** and **Baxstrom**. See McNeil v. Director, Patuxent Institution, 407 U.S. 245, 92 S.Ct. 2083, 32 L.Ed.2d 719 (1972); Humphrey v. Cady, 405 U.S. 504, 92 S.Ct. 1048, 31 L.Ed.2d 394 (1972).

[4] No issue is raised regarding the propriety of penitentiary inmate transfer to a mental facility. On this subject, see Matthews v. Hardy, 420 F.2d 607 (D.C. Cir. 1969), cert. denied, 397 U.S. 1010 (1970); United States ex. rel. Schuster v. Herold, 410 F.2d 1071 (2d Cir.) cert. denied, 396 U.S. 847 (1969).