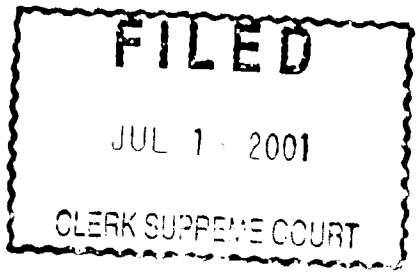
IN THE COURT OF APPEALS OF IOWA

No. 1-381 / 00-1639
Filed July 18, 2001



STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT ALLEN JONES, JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Gary J. McKenrick, Judge.

Defendant-Appellant appeals the sentence imposed after pleading guilty to the offense of stalking in violation of a domestic no contact order contrary to Iowa Code Section 708.11(3)(b) (1999). **SENTENCE VACATED; REMANDED FOR SENTENCING.**

Kent A. Simmons, Davenport, for appellant.

Thomas J. Miller, Attorney General, Cristen C. Odell, Assistant Attorney General, William E. Davis, County Attorney, and Joseph Grubisich and Julie A. Walton, Assistant County Attorneys, for appellee.

Considered by Hayden, Habhab and Honsell, Senior Judges*

Senior Judges assigned by order pursuant to Iowa Code Section 602.9206 (2000).

HONSELL, S.J.

Following a plea of guilty to the offense of stalking in violation of a domestic no contact order, Iowa Code section 708.11(3)(b) (1999), the district court sentenced defendant to an indeterminate five-year prison term and a fine of $1,000.00.

At the time of entry of the plea the State stipulated that it would make no recommendation with regard to incarceration. The presentence investigation report submitted in advance of sentencing recommended incarceration. It set forth information alluded to in Iowa Code section 901.3, however it did not provide any information concerning the victim, nor was a victim impact statement on file at the time of the sentencing.

At the sentencing proceeding Robert's attorney told the court defendant wished to be considered for supervised probation, and counsel requested the opportunity to have the victim of the offense testify, indicating she was present in the courtroom for the purpose of testifying on behalf of Robert.

After Robert addressed the court sentence was imposed. Robert was not given the opportunity to have the victim testify. After the court apprised defendant of his right to appeal, defendant's attorney again requested that the victim be allowed to testify. The district court responded:

> The individual victim in this case isn't the focus of the Court's consideration regarding the appropriate sentence. Rather the failure in the past to comply with probation, the escalating criminal activity that he's engaged in since his discharge from that previous sentence of incarceration and the need to protect the community from that escalation, as well as the defendant's own inability to take advantage of opportunities to address his substance abuse problems are the reasons that the Court has found to impose the sentence of incarceration at this time. Thank you.

I. Standard and Scope of Review.

The standard of review in this case is for errors at law. Iowa R. App. P. 4. The scope of review for defects in a sentencing procedure is for an abuse of discretion by the sentencing court. *State v. Millsap,* 547 N.W.2d 8, 10 (Iowa Ct. App. 1996).

In *State v. Craig,* 562 N.W.2d 633, 634 (Iowa 1997), the court states, "Our review of sentencing procedures is for an abuse of discretion. Such abuse will only be found if the district court's discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Id.* We have recognized that a sentencing court is not required to use any particular language to satisfy rule 22(3)(d). *See id.* at 635. Substantial compliance with the rule is sufficient. *Id.* Substantial compliance is achieved as long as the district court provides the defendant with an opportunity to volunteer any information helpful to the defendant's cause. *Id. State v. Duckworth*, 597 N.W.2d 799, 800 (Iowa 1999).

II. The Merits.

The first sentence of Iowa Code section 901.2 states:

> Upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction of a public offense may be rendered, the court shall receive from the state, from the judicial district department of correctional services, and from the defendant any information which may be offered which is relevant to the question of sentencing. The court may consider information from other sources

Iowa Code section 915.13 (1) (d) provides:

> 1. The county attorney shall notify a victim registered with the county attorney's office of the following: d. The victim's right to

> make a victim impact statement, in one or both of the following formats:(1) Written victim impact statement. Notification shall include the procedures for filing such a statement. (2) Oral victim impact statement, delivered in court in the presence of the defendant. The victim shall also be notified of the time and place for such statement.

Even if the district court erred in not allowing the victim to testify, the sentence imposed does not have to be reversed if such error was harmless. Prejudice must be shown before any error requires reversal. However, such error must be shown by the State to be harmless beyond a reasonable doubt. *State v. Boley*, 456 N.W.2d 674, 678 (Iowa 1990).

Reversible error was committed when no provision was made for the victim to testify. Although the trial court heard the summary of what the victim would say, he did not observe the victim testify, nor have the opportunity to evaluate the testimony as given by the victim. It cannot be said that the error was harmless.

SENTENCE VACATED; REMANDED FOR SENTENCING.