FILED
SEP 24 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

358

STATE OF IOWA,)

Plaintiff-Appellee,) Filed September 24, 1985

vs.)

JOSE DOLORES AHEDO,) 5-374
84-1414

Defendant-Appellant.)

Appeal from the Iowa District Court for Linn County - Robert E. Ford, Judge.

Defendant appeals from the sentence imposed following his conviction of burglary in the second degree, in violation of Iowa Code sections 713.1 and 713.5 (1983). **AFFIRMED.**

Charles L. Harrington, Appellate Defender, and Raymond E. Rogers, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Lona Hansen, Assistant Attorney General, for plaintiff-appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

DONIELSON, P.J.

Defendant appeals from the sentence imposed following his conviction of burglary in the second degree, in violation of Iowa Code sections 713.1 and 713.5 (1983), asserting that the district court abused its discretion in equating juvenile probation with adult probation and in denying probation on the ground that the defendant had not been rehabilitated while on probation in juvenile court.

The State asserts that the trial court did not abuse its discretion in sentencing defendant to incarceration.

The defendant was charged in juvenile court with burglary in the second degree on February 22, 1984. He became eighteen years of age soon after the charge was filed. His case was transferred to district court and thereafter defendant pled guilty to second-degree burglary. The court sentenced defendant to a term of imprisonment not to exceed ten years. As its reasons for the sentence imposed, the trial court stated as follows:

> I believe the defendant in order to be rehabilitated needs structure and supervision which he cannot get on probation.
>
> I do not believe he is amenable to or entitled to further probation or the Community Corrections Center alternative.
>
> This type of sentence I believe is appropriate under the circumstances. It should deter others from the commission of similar crimes and should impress upon the defendant in this case his accountability for his actions.
>
> I am not considering the defendant's record as a juvenile as outlined in the pre-sentence investigation report, but I am considering the portion of the presentence investigation report which indicates the various attempts that have been made to rehabilitate the defendant. That is to say, on page 2 there is an indication of the type of rehabilitation which has been afforded to the defendant and I do not believe if those things have been afforded to him that there is any further way that the defendant can be rehabilitated on the outside under a probationary type sentence.

The trial court's decision in denying probation will not constitute an abuse of discretion unless such discretion was exercised on clearly untenable grounds or reasons or to a clearly unreasonable extent. State v. Morrison, 323 N.W.2d 254, 256 (Iowa 1982).

The defendant seeks to establish that the trial court mistakenly equated juvenile probation with adult probation. To support this position, defendant's brief indicates that because a violation of terms of juvenile probation cannot lead to incarceration like adult probation, the defendant's violations of juvenile probation do not necessarily mean that he would similarly violate the terms of adult probation. See Iowa Code § 218.91 (1983); repealed by 1983 Iowa Acts, ch. 96, § 156, 159. Thus, defendant contends that it was error to consider violations of juvenile probation when sentencing in adult court.

While the degree of consequences may differ, defendant was sufficiently aware that violation of either type of probation has serious consequences. Both juvenile and adult probation provide for loss of liberty when its terms are violated; albeit the former under current law cannot lead to a transfer to a reformatory. Compare Iowa Code § 232.52(2)(E) (1985) (violation of juvenile probation terms can lead to placement in state training school) with Iowa Code § 908.11 (adult revocation of probation can lead to imposition of jail sentence).

The defendant's presentence investigation report contained no less than 15 juvenile incidents beginning in 1979. Defendant was committed to Eldora Boys Training School on three separate occasions. Even though the law on juvenile probation changed in 1983, we do not believe this is a sufficient reason for finding the trial court should have granted defendant probation in this case. Defendant knew the consequences of his actions and knowingly acted at his peril. Based on the defendant's history, and other relevant factors outlined in State v. Davis,

195 N.W.2d 677, 678 (Iowa 1972), we cannot find that the trial court abused its discretion.

AFFIRMED.