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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-594 / 94-462

STATE OF IOWA,

Appellee,

vs.

PAMELA J. RATHBUN,

Appellant.

Appeal from the Iowa District Court for Buchanan County, Thomas N. Bower, District Associate Judge.

Pamela J. Rathbun appeals her conviction, following a guilty plea, for public intoxication, third offense. **AFFIRMED.**

John E. Meyer, Independence, for appellant.

Thomas J. Miller, Attorney General, Angelina M. Smith, Assistant Attorney General, Allan W. Vanderhart, County Attorney, and Andrea Jordan, Assistant County Attorney, for appellee.

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

HAYDEN, P.J.

Pamela Rathbun was charged with public intoxication, third offense, in violation of Iowa Code sections 123.46(2) and 123.91(2) (1993). She signed a written guilty plea which discussed the nature of the charge, the possible punishment, the waiver of constitutional rights, the existence of a factual basis, and the voluntary nature of the plea. The written plea also informed Rathbun of the procedure and necessity of filing a motion in arrest of judgment to challenge the proceedings. The written guilty plea further included a waiver of the right to be addressed by the judge in open court.

The trial court sentenced Rathbun to a term not to exceed thirty days in jail. The court stated it did not believe Rathbun could be treated based on her past experience and there would be no point in putting her on probation. However, the court decided not to give Rathbun a three-month sentence because she had not been driving while intoxicated and had not put anyone at risk. Finally, the trial court stated:

> My guess is you've had treatment through your probation in your past. You've elected not to follow through with that. [S]o all we'll do from now on is lock you up . . . .

Rathbun appeals. She raises two issues on appeal. First, Rathbun claims the trial court erred in failing to address her personally in open court (an in-court acknowledgment of the written plea) before accepting her

guilty plea. Second, Rathbun contends the trial court improperly rejected suspending her sentence or ordering treatment due to an assumption she had been unsuccessfully treated as a condition of probation in the past. We affirm.

I. **Adequacy of Plea Proceeding.**

Our standard of review of plea proceedings is for correction of errors at law. Iowa R. App. P. 4; State v. Glenn, 505 N.W.2d 818, 819 (Iowa App. 1993).

Rathbun contends her plea of guilty must be set aside because of defects in the plea proceeding. She argues the trial court failed to inform her of the matters enumerated in Iowa Rule of Criminal Procedure 8(2)(b), in the manner prescribed by that rule.

Iowa Rule of Criminal Procedure 8(2)(b) provides:

> b. Pleas of Guilty. The court may refuse to accept a plea of guilty, and shall not accept a plea of guilty without first determining that the plea is made voluntarily and intelligently and has a factual basis. Before accepting a plea of guilty, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:
> (1) The nature of the charge to which the plea is offered.
> (2) The mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered.
> (3) That the defendant has the right to be tried by a jury, and at trial has the right to assistance of counsel, the right to confront and cross-examine witnesses against the defendant, the right not to be compelled to incriminate oneself, and the right to present witnesses in the defendant's own behalf and to have compulsory process in securing their attendance.
> (4) That if the defendant pleads guilty there will not be a further trial of any kind, so that

> by pleading guilty the defendant waives the right to a trial.
> The court may, in its discretion and with the approval of the defendant, waive the above procedures in a plea of guilty to a serious or aggravated misdemeanor. (Emphasis added.)

Rathbun pled guilty to an aggravated misdemeanor. As seen above, rule 8(2)(b) explicitly authorizes waiver of personal colloquy in cases of aggravated misdemeanor. Rathbun entered a five-page written guilty plea which detailed her understanding of the plea, as well as its voluntary nature. The plea included detailed statements of Rathbun's knowledge of all of the enumerated subjects of rule 8(2)(b), as well as information not required by the rule. Finally, the plea included an express waiver of the court's personal colloquy which states:

> I understand that I have the right under the Rules of Criminal Procedure to have the Judge address me in open court to discuss my understanding of all of the matters set out in this written plea. I also understand that I give up my right under that Rule by signing this written guilty plea.

This statement serves as Rathbun's approval of the court's discretionary waiver of the requirements under rule 8(2)(b). Rathbun appears to claim a personal colloquy between defendant and the court is required prior to acceptance of all guilty pleas. This argument directly contradicts Iowa Rule of Criminal Procedure 8(2)(b). No error occurred here. We affirm on this issue.

II. Sentencing.

We review sentencing for an abuse of discretion. In order to show an abuse of discretion, one generally must

show the court exercised its discretion "'on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" State v. Blackwell, 238 N.W.2d 131, 138 (Iowa 1976) (quoting Weeks v. Burnor, 326 A.2d 138, 140 (Vt. 1974)).

Rathbun contends the sentencing court abused its discretion here. Specifically, she claims the trial court impermissibly inferred from Rathbun's past criminal record and prior sentences she had unsuccessfully undergone treatment for her alcohol problem.

It is well-settled the trial court "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 of his reform." State v. Hildebrand, 280 N.W.2d 393, 396 (Iowa 1979) (internal quotation omitted and emphasis added). Further, each sentence is to be decided on an individual basis, so the punishment fits both the crime and the individual. State v. McKeever, 276 N.W.2d 385, 387 (Iowa 1979); Hildebrand, 280 N.W.2d at 396.

In this case the sentencing court considered a number of factors prior to sentencing Rathbun, including the nature of the offense, the attending circumstances, and Rathbun's "past experience" in the criminal process as it related to her propensity to reform. It was proper for the sentencing court to consider Rathbun's criminal history and

alcohol-related problems in determining the sentence. See State v. Waterman, 217 N.W.2d 621, 623-24 (Iowa 1974) (finding it proper for the sentencing court to consider defendant's record of prior convictions); State v. LeGrand, 501 N.W.2d 59, 63 (Iowa App. 1993) (holding it proper for the sentencing court to consider defendant's history of substance abuse-related offenses). These factors establish within the last four years Rathbun had been convicted of public intoxication at least four times, with sentences ranging from probation to thirty days in the county jail. Upon reviewing this information, the sentencing court opined Rathbun had probably been ordered to obtain treatment in the past and had been unsuccessful. The fact the record does not explicitly establish she participated in a treatment program does not foreclose the court's inference of such treatment based on the evidence within the record. See State v. Stanley, 344 N.W.2d 564, 570 (Iowa App. 1983) ("defendant may not successfully challenge the soundness of the trial court's discretion even though it involved conclusions"). Considering the numerous times Rathbun had repeated the same offense and the apparent rehabilitative failure of previous probation, the sentencing court determined Rathbun's chances of reform through participation in a probationary treatment program were not encouraging. Consideration of Rathbun's "propensities and chances of reform" in imposing sentence was proper. State v. Hildebrand, 280 N.W.2d 393, 396 (Iowa

1979) (internal quotation omitted). Under these facts, the sentencing court's utilization of an inference based upon evidence within the record does not constitute an abuse of the court's broad sentencing discretion. Judgment of the trial court affirmed.

AFFIRMED.