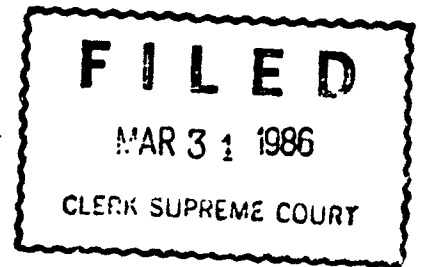


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed March 31, 1986

vs.

)

292

STEVEN CALVIN HANDLING,

)

6-36
85-922

Defendant-Appellant.

)

Appeal from the Iowa District Court for Keokuk County (2151-7-240) Dan F. Morrison, Judge.

Defendant appeals from the sentence imposed following his guilty plea conviction of second-degree burglary as defined in Iowa Code sections 713.1 and 713.5 (1983). **AFFIRMED.**

Charles Harrington, Chief Appellate Defender, and John P. Messina, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and David L. Dorff, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., Schlegel, and Hayden, JJ.

Defendant Steven Calvin Handling was initially charged with second-degree burglary, second-degree theft, and second-degree criminal mischief. He entered a plea of guilty to the second-degree burglary charge, pursuant to a plea bargain in which the State agreed to dismiss the other two charges, as well as pending charges in two other counties.

At the sentencing proceeding, defendant asked that he be given a suspended sentence with probation. The district court, however, imposed a sentence of imprisonment for up to ten years. The district court stated on the record as follows:

Mr. Handling, I am not going to suspend the sentence in this matter. I reviewed the presentence, I have listened to all the corrections and I have taken them at their face value. I have disregarded those items which you talked to me about. I have not taken them into account, the cases that were dismissed. After doing that, however, your record still reflects a long term and continuous disregard for the laws of the State of Iowa. You have at times made probation; you have other times been revoked and you have been in prison and you know what it's like and still you decided to commit this charge and apparently other charges. (Emphasis added.)

There is nothing in this presentence that would indicate that probation would be in the best interest of society or that there would be any reasonable likelihood that you would be able to successfully complete a term of probation on a felony which would be at least three years. I am sure that you do feel a great deal of remorse about not being around to raise your child. That's something you should have thought about a little earlier, and from looking at this record, it is quite obvious, this is not your first time and contact, Mr. Handling, with this system.

I have taken into account your age, the employment that you do have which appears to be a fine job, your family circumstances and the fact that this was a property crime and not a crime against a person. However, based upon your lengthy record and I have taken into account this traffic record which although may not be the longest I have seen, certainly is close to it and even though it is traffic, it certainly indicates a total disregard for any type of laws.

Defendant claims the sentencing court considered other charges which were unproven against defendant in determining the sentence. We disagree.

Although the district court made a slight reference to this charge and apparently other charges he does not state that he relied upon any unproved charges in determining defendant's sentence, and from this record we do not infer that he did rely upon them.

In the cases cited and relied upon by the defendant, the sentencing courts clearly relied upon unproven or unprosecuted charges, or upon a juvenile record in a misdemeanor's sentence. This is improper. See State v. Hagemeier, 310 N.W.2d 218, 219 (Iowa 1981); State v. Messer, 306 N.W.2d 731, 733 (Iowa 1981); State v. Thompson, 275 N.W.2d 370, 372 (Iowa 1979). Such is not the case before us.

AFFIRMED.