FILED
JUN 30 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Appellee,) Filed June 30, 1978
vs.)
WYLIE WALTER BICKERSTAFF,) 569/61354
Appellant.)

Appeal from Woodbury District Court - Lawrence W. McCormick, Judge.

Appeal by defendant alleging abuse of discretion in sentencing. - Affirmed.

Thomas A. Vakulskas, Sioux City, for Appellant.

Richard C. Turner, Attorney General of Iowa, and Zigmund Chwirka, Woodbury County Attorney, for Appellee.

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

PER CURIAM

Defendant Wylie Walter Bickerstaff appeals from the sentence entered following his plea of guilty to the reduced charge of robbery without aggravation in violation of § 711.3, The Code. The only issue raised on appeal is whether the trial court abused its discretion in sentencing defendant to a term not to exceed ten years in the state penitentiary instead of granting him probation as he requested.

The determination of whether to sentence a defendant to jail, impose a fine or grant probation rather than sentencing him to imprisonment in the penitentiary is addressed to the sound discretion of the trial court. State v. Peckenschneider, 236 N.W.2d 344, 348 (Iowa 1975). So long as the sentence is within the statutory maximum, the reviewing court will not reverse absent an abuse of discretion. State v. Grgurich, 253 N.W.2d 605, 606 (Iowa 1977); State v. Noonan, 246 N.W.2d 236, 237 (Iowa 1976); State v. Smith, 244 N.W.2d 325, 327 (Iowa 1976). The statutory sentence for robbery without aggravation in violation of § 711.3 is an indeterminate sentence of not more than ten years in the state penitentiary. Section 711.3, The Code. Since the sentence was within the statutory maximum, unless the trial court abused its discretion, defendant's sentence must be upheld. Grgurich, supra.

The exercise of a lower court's discretion is not reviewable. It is only the alleged abuse of discretion which is reviewable on appeal. Noonan, supra; State v. Warner, 229 N.W.2d 776, 783 (Iowa 1975). Abuse of discretion will be found only where there is no support for the decision in the evidence. Warner, supra. It means no discretion to do what was done. Warner, supra; Wilkes v. Iowa State Highway Commission, 186 N.W.2d 604, 607 (Iowa 1971).

In order to have an abuse of discretion, the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias. The term itself involves the idea of choice, of a determination made between competing considerations. Noonan, supra; Warner, supra.

The trial court considered both the seriousness of the offense and its duty to the public as well as to defendant before imposing sentence. Grgurich, supra. We find no abuse of discretion.

AFFIRMED.