

IN THE COURT OF APPEALS OF IOWA

No. 3-310 / 92-1426

FILED

AUG 06 1993

CLERK SUPREME COURT

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STATE OF IOWA,

Appellee,

vs.

TERESA LYNN HATLEN,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

The defendant appeals a judgment and sentence of the district court finding defendant guilty of one count of delivery of a controlled substance, methamphetamine, in violation of Iowa Code section 204.401(1)(c) (1991), and one count of failure to affix a drug tax stamp in violation of Iowa Code section 421A.12 (1991). **AFFIRMED.**

Andrew J. Dunn of Parrish & Kruidenier, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General; Robert P. Ewald, Assistant Attorney General; Thomas J. Ferguson, County Attorney; and Kimberly Griffith, Assistant County Attorney, for appellee.

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

DONIELSON, P.J. 000780

The defendant, Teresa Hatlen, was convicted and sentenced in 1989 on a federal count of conspiracy to distribute cocaine. Hatlen served a sixteen-month term of imprisonment. Following her parole from federal prison, Hatlen was accused of two counts of delivery of methamphetamine. Hatlen's federal parole was revoked, and she was sentenced to serve two months in the Monona County jail. Hatlen then was placed in a Waterloo residential facility for three months.

On January 24, 1992, the Black Hawk County attorney's office filed a three-count trial information against Hatlen, charging her with the same two counts of delivery of methamphetamine and a third charge of failure to affix a drug tax stamp. The trial information was later amended to allege that Hatlen was a second offender. Hatlen reached a plea agreement with the State whereby the State agreed to drop one charge of delivery for pleading guilty to one count of delivery and failure to affix a drug tax stamp. Hatlen entered her plea of guilty before Judge Mahan. Following several continuances, Hatlen appeared for sentencing on August 28, 1992, before Judge Stigler. At the sentencing, Judge Stigler stated that Hatlen did not appear to have learned from her previous experiences and that a tougher sentence was in order. Judge Stigler sentenced Hatlen to a thirty-year term of imprisonment on the delivery count and five years for failure to affix a

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drug tax stamp. Judge Stigler also ordered that Hatlen serve a mandatory minimum one-third of the sentence, and also imposed a \$3000 fine. Hatlen has appealed.

Hatlen argues that the sentencing court erred in sentencing her to a thirty-year prison term. Hatlen maintains that she had met all of her parole requirements, was attending all her counseling sessions, worked full-time, attended church on a regular basis, and had not been on any drugs for over a one-year period. Hatlen contends that her best chances for rehabilitation would be for her to be assimilated back into society and continue her hard work to repay her debt. Hatlen also argues that defense counsel was ineffective in failing to object to a different judge at the sentencing hearing. Hatlen argues that the judge who accepted the plea should have ordered the sentences. Hatlen argues that Judge Stigler had not acquainted himself with the presentence investigation report and was not fully aware of her efforts in becoming a productive citizen.

I. Abuse of discretion.

When sentencing discretion has been accorded and exercised it is subject to limited appellate review. State v. Pappas, 337 N.W.2d 490, 494 (Iowa 1983). We interfere in discretionary sentencing only if there has been an abuse of discretion. State v. Dvorsky, 322 N.W.2d 62, 67 (Iowa 1982). An abuse will not be found unless the defendant

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shows that such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. Pappas, 337 N.W.2d at 493. The district court, within the limits of applicable statutes, had the discretion to select a sentence that would "provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others." Iowa Code § 901.5 (1993). There is a strong presumption that the discretion of the trial court was rightfully exercised. Pappas, 337 N.W.2d at 494. The defendant has a heavy burden of affirmatively showing abuse and prejudice to overcome this presumption of regularity. Id. The trial court imposed a sentence clearly within the limits of the applicable statutes. The court specifically cited the protection of the community from further offenses by the defendant among the reasons for imposing a lengthy sentence. Failure to recite consideration of the issue of rehabilitation specifically "is not the type of affirmative showing of abuse envisioned by the court in Pappas." State v. Stanley, 344 N.W.2d 564, 569 (Iowa App. 1983). Ample evidence exists in the record that the trial court considered Hatlen's past actions and probation violations in determining the sentence imposed. Because Hatlen has failed to overcome the presumption of regularity, we find no abuse of discretion.

II. Ineffective assistance of counsel.**000783**

Normally, ineffective-assistance-of-counsel claims are best resolved under Iowa Code chapter 822 in postconviction proceedings in which a full evidentiary hearing can be held. State v. Hill, 449 N.W.2d 626, 628 (Iowa 1989); State v. Johnson, 445 N.W.2d 562, 565 (Iowa 1989). The substantive issues should be preserved for such proceedings so that a more complete record on the ineffectiveness issue can be developed. State v. Wade, 467 N.W.2d 283, 286 (Iowa 1991).

Because the present record does not provide a sufficient basis upon which to determine the effectiveness of Hatlen's counsel, we reserve that issue for postconviction proceedings.

The costs of the appeal are taxed to Hatlen.

For the reasons stated above, we affirm the decision of the district court.

AFFIRMED.