

IN THE COURT OF APPEALS OF IOWA

No. 23-0221
Filed February 21, 2024

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SETH DEAN FOSTER,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, Clinton R. Boddicker, Judge.

A defendant challenges his sentence for enticing a minor. **AFFIRMED.**

Martha J. Lucey, State Appellate Defender, and Maria Ruhtenberg, Assistant Appellate Defender, for appellant.

Brenna Bird, Attorney General, and Anagha Dixit, Assistant Attorney General, for appellee.

Considered by Tabor, P.J., and Badding and Chicchelly, JJ.

TABOR, Presiding Judge.

A jury convicted Seth Foster of enticing a minor after hearing evidence that he sent lewd messages to a detective posing as a fifteen-year-old girl on Facebook Messenger. The district court sentenced Foster to a term of no more than five years in prison. He appeals, contending the court discounted mitigating factors that pointed to residential treatment as a better fit than prison. Because the court properly relied on the pertinent sentencing factors, we find no abuse of discretion. Thus, we affirm Foster's sentence.

I. Facts and Prior Proceedings

For ten days, thirty-seven-year-old Foster exchanged personal messages with teenager "Abby Johnson." What Foster didn't know is that he was messaging Detective David Murguia of the Des Moines County Sheriff's Office pretending to be "Abby." In September 2022, they became Facebook "friends." At first, Foster believed Abby was eighteen years old. But he continued their dialogue even after she told him that she was "only 15." He mentioned where he worked and asked Abby what she liked to do. He asked her about high school and told her he understood her when she said: "no one talks to me." He said they were "kindred souls." Abby said she was in a temporary foster home and would not be in Burlington for long.

Soon their conversation took a turn. Foster mentioned his "dick" and his "tongue game." He then discussed his penis size, his piercings, and what he had done with women. He also told her what he thought about doing to her. Foster told Abby that he "would have liked to actually meet" her. But he acknowledged that if her foster family found out, they would "freak" and he would be "charged with

enticing a minor.” Still, Foster suggested they meet at the Aspen Grove Cemetery to have sexual intercourse—he had a “family member he should probably pay respects to” there anyway. That became the plan. He assured Abby that he was “fixed” and couldn’t get her “prego.” Abby said she was still worried, so Foster bought condoms at a gas station on his way to meet her. When Foster pulled up to the cemetery, Detective Murguia was there to meet him.

The State charged Foster with enticing a minor, a class “D” felony, in violation of Iowa Code section 710.10(2) (2022). A jury found him guilty. At sentencing, the court considered Foster’s 2006 conviction for assault with intent to commit sexual abuse and his 2015 conviction for a violation of sex offender registry requirements. Foster told the sentencing court that he had “a rough time” going through sex-offender treatment. The court sentenced him to prison for a term not to exceed five years with credit for time served. It also imposed a minimum fine of \$1025 with a fifteen percent surcharge. Foster will have to register as a sex offender for life under Iowa Code chapter 692A. Foster appeals his sentence.

II. Analysis

At the sentencing hearing, the State recommended that Foster be sentenced to prison, citing his score of moderate to moderate-high risk of re-offending on a sex-offender evaluation included in the presentence investigation report (PSI). For his part, Foster argued that he should be sent to a halfway house for treatment. The court adopted the State’s recommendation.

We review sentences within statutory limits for an abuse of discretion. *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). We will not find an abuse unless we discern that the sentencing court exercised its discretion on grounds or for

reasons that were clearly untenable or unreasonable. *Id.* In applying this standard, “it is important to consider the societal goals of sentencing criminal offenders, which focus on rehabilitation of the offender and the protection of the community from further offenses.” *Id.* (citing Iowa Code § 901.5).

Foster contends his argument for a halfway house was “compelling” because he was regretful and understood why he failed in his treatment the first time he was convicted of a sex offense. He argues that the court overemphasized his “failure to complete treatment many years ago.”

We expect sentencing courts to weigh multiple factors. *State v. Johnson*, 513 N.W.2d 717, 719 (Iowa 1994). Those factors include “the nature of the offense, the attending circumstances, the age, character and propensity of the offender, and the chances of reform.” *State v. Damme*, 944 N.W.2d 98, 106 (Iowa 2020) (citation omitted). Courts must also consider “the defendant’s prior record of convictions or deferred judgments, employment status, family circumstances, and any other relevant factors, as well as which of the sentencing options would satisfy the societal goals of sentencing.” *Formaro*, 638 N.W.2d at 725.

At Foster’s sentencing, the court balanced the relevant aggravating and mitigating factors—not just Foster’s failure to complete his treatment. A sentencing court has the discretion to weigh all the relevant factors. *State v. Wright*, 340 N.W.2d 590, 593 (Iowa 1983). And it doesn’t need to explain its reasoning for rejecting particular sentencing options. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996).

Before imposing Foster's prison term, the court explained its reasoning:

In making the sentencing decision, I consider a number of factors, and I group those various factors into mitigating circumstances, which are circumstances that would weigh in favor of a more lenient sentence in your case, and aggravating factors that weigh in favor of a harsher sentence in your case.

In considering all those factors, I note the following aggravating circumstances or factors: First is your age. You're no longer a youthful offender.

Secondly, I consider your prior criminal record to be an aggravating factor, and specifically what I take into account for the purposes of this hearing is your previous conviction in 2006 for assault with intent to commit sexual abuse and your conviction from 2015 for sex offender registration violation. I note that you have previously been placed on formal probation with respect to the assault matter.

The court then considered the mitigating factors:

[Before] your arrest you did have a history of steady employment and were full-time employed . . . in a managerial position.

I also take into account that you appear to have family support in the area. You appear . . . to have had a stable residence prior to the time of your arrest.

I also take into consideration your attorney's recommendation of a suspended sentence with placement at the residential facility.

Finally, I note that you have completed your high school equivalency, and that is a positive factor in your favor as well.

I also take into consideration the fact that you've served a substantial period of time in jail while awaiting trial and following your trial.

The court also considered Foster's admission to using illegal substances despite denying a "substance abuse or drug problem," the PSI risk assessment, and the nature of the offense. The court told Foster that "[a]lthough there was not an actual victim in your case . . . the jury found and the court finds that there's substantial evidence to show that your offense was committed with the intent to commit an illegal sex act, which would be sexual abuse."

A court may abuse its discretion if it “fails to consider a relevant factor that should have received significant weight” or “gives significant weight to an improper or irrelevant factor.” *State v. Roby*, 897 N.W.2d 127, 138 (Iowa 2017) (citation omitted). Neither of those scenarios fits here. The court considered the necessary factors. Foster’s prior convictions were relevant. The court was within its discretion to weigh the aggravating factors more heavily than the mitigating ones and sentence him within the appropriate statutory range. Finding no abuse of discretion, we affirm.

AFFIRMED.