

IN THE COURT OF APPEALS OF IOWA

No. 23-1325
Filed March 6, 2024

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TROY ELDON REES,
Defendant-Appellant.

Appeal from the Iowa District Court for Dubuque County, Monica Zrinyi
Ackley, Judge.

A defendant appeals the sentence imposed, arguing he was denied his right
of allocution. **AFFIRMED.**

Alexander Smith of Parrish Kruidenier Dunn Gentry Brown Bergmann &
Messamer L.L.P., Des Moines, for appellant.

Brenna Bird, Attorney General, and Bridget A. Chambers, Assistant
Attorney General, for appellee.

Considered by Bower, C.J., and Greer and Chicchelly, JJ.

GREER, Judge.

Troy Rees pled guilty to failure to comply with sex offender registration requirements in violation of Iowa Code sections 692A.104(3) and 692A.111(1) (2023), an aggravated misdemeanor; and violation of probation¹ in June 2023. On appeal, he takes issue with the court's alleged interference with his right to allocution and seeks resentencing.

At the joint probation revocation and sentencing hearing in August, the State recommended a two-year term of imprisonment for the failure to comply with the sex offender registration requirement and that the court reinstate the ten-year suspended sentence for the probation violation. Rees requested continued probation that would allow him to serve his sentence in a halfway house. While he conceded that he had not succeeded on probation with minimal supervision, he argued that an increased amount of supervision at a halfway house would allow him to regularly take medication for attention-deficit/hyperactivity disorder (ADHD) and get him back on the right track.² He also insisted that there was no guarantee that he would get any treatment in prison. Rees's probation officer spoke and recommended that the court revoke Rees's probation and require him to serve the term of imprisonment.

¹ The underlying charge was sexual exploitation of a minor, a class "C" felony, in violation of Iowa Code section 728.12(1) (2020). In May 2022, Rees was sentenced to a ten-year term of imprisonment; the court suspended that sentence and placed him on probation. It also required that he register on the sex offender registry. See *id.* § 903B.1.

² Pointing to this condition the court should consider, Rees also offered and the court admitted three exhibits about ADHD, medication for ADHD, and current shortages of ADHD medication.

During the hearing, after the court asked if Rees wished “to make an allocution,” Rees had the following exchange with the sentencing court while making his sentencing request:

REES: So what I told my attorney is, if I were to get to the halfway house, I’d be sitting at the halfway house and working at least one or two jobs, saving money, pay the court, pay the halfway house, and then I’d keep my phone at the halfway house while I go to work or while I’m at my house, and then I would stay there, work on myself, do my sex offender [treatment] program [(SOTP)] program, and do the classes outside of everything else, which they told us about. And to be honest, I think that that would help me, because I’ve never had any, like, classes like that available to me outside of my house, work, or anything. This is the first time I’ve ever heard of these groups, and I think they would help. And I actually have a plan, which I would like.

THE COURT: So you’re telling me that your impression is that you did not have any opportunity for classes while you were on probation?

REES: I didn’t know there was classes. The only class I knew about was the one that I was going to. This one that I found out about, it was about depression, isolating yourself, things that I never knew that were groups that were outside until I’ve been in here, until they started taking us from my pod to those classes. And now that I know that they have them out there, you know, I would like to at least give them a try. And I know I can do better for myself, and I just want to apologize. I don’t think before I do it. With the medication, like my attorney said, without my medication, I am pretty much, if I think of it, I do it. I don’t think, nothing.

THE COURT: Did you get a copy of the disposition order entered when you were before the court in the aggravated, or, excuse me, in the felony matter?

REES: Yes.

THE COURT: All right. It was dated May 17th, 2022. And in one of the paragraphs, it indicates that you were to be sentenced to the special sentence to the custody of the Department for your lifetime because of the nature of the offense, and the next sentence reads as follows, and I’m quoting this. This is out of Paragraph 10. Defendant shall pay a civil penalty of \$260.00, complete SOTP, and register as a sex offender as required by Iowa Code Chapter 692A. Did you understand that?

REES: Yes, Your Honor.

THE COURT: Did you register?

REES: I forgot. They didn't write it down the first time for me, so I forgot. And then the people, in February, I went in and registered, and I admitted that I forgot to register in November.

THE COURT: Did you pay the civil penalty of \$260.00?

REES: I did not.

Citing concern for the community's safety, the court imposed a two-year term of imprisonment on Rees's conviction for failing to comply with sex offender registration requirements and ordered Reese to serve that sentence consecutive to the reinstated ten-year term of imprisonment for the probation violation for a total term of imprisonment of twelve years. Rees appeals.³

We will not reverse a sentence within the statutory limits absent an abuse of discretion or defect in the sentencing procedure. *State v. Gordon*, 998 N.W.2d 859, 862 (Iowa 2023). And "the decision of the district court to impose a particular sentence within the statutory limits is cloaked with a strong presumption in its favor." *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). Iowa law allows for a sentence of two years for an aggravated misdemeanor conviction. See Iowa Code § 903.1(2) ("When a person is convicted of an aggravated misdemeanor, and a specific penalty is not provided for, the maximum penalty shall be imprisonment not to exceed two years."). It also allows for a court to revoke probation and reinstate the sentence suspended before the offender was placed on probation. See *id.* § 908.11(4). Therefore, Rees's sentence within the statutory limits here has a strong presumption in its favor.

³ Although Rees pled guilty, because he is challenging the sentence imposed and not the guilty plea, he has good cause for appeal. See Iowa Code § 814.6(1)(a)(3) (2023) (granting the right of appeal "where the defendant establishes good cause"); *State v. Damme*, 944 N.W.2d 98, 105 (Iowa 2020) ("We hold that good cause exists to appeal from a conviction following a guilty plea when the defendant challenges his or her sentence rather than the guilty plea.").

On appeal, Rees asserts that the court interrupted his right of allocution and instead, involved him in a verbal exchange regarding SOTP classes and other classes in the community without allowing him to return to his allocution statement before announcing his sentence. He argues that the court focused on aggravating rather than any mitigating factors in the exchange and thus, he did not get the opportunity to list his mitigating circumstances. A defendant's right to allocution is codified in Iowa Rule of Criminal Procedure 2.23(2)(d)(3); see also *State v. Nosa*, 738 N.W.2d 658, 660 (Iowa Ct. App. 2007) (relying on the previous rules before they were amended effective July 1, 2023). The court is required to "[a]ddress the defendant personally in order to permit the defendant to make a statement or present any information to mitigate the defendant's sentence." Iowa R. Crim. P. 2.23(2)(d)(3). The defendant's attorney must also be given a chance "to speak on the defendant's behalf." See Iowa R. Crim. P. 2.23(2)(d)(2). And we note that here, Rees's counsel spent considerable time advocating for Rees with specific details about the impact of his ADHD condition, his educational and family challenges, and the benefits of probation in relationship to the available treatment.

"In affording the defendant the right of allocution, the district court need not utter any particular words or phrases." *State v. Davis*, 969 N.W.2d 783, 788 (Iowa 2022). The court substantially complies with the requirement by allowing the defendant a chance to provide information that would help the defendant's cause. See *id.* "[A]s long as the district court provides the defendant with an opportunity to speak regarding his punishment, the court is in compliance with the rule." *State v. Garlick*, No. 07-1507, 2008 WL 1885762, at *4 (Iowa Ct. App. Apr. 30, 2008). Most important is that "the court has 'invited, or afforded an opportunity for' the

defendant to speak regarding punishment” and “given an opportunity to volunteer any information helpful to the defendant’s cause.” *State v. Lumadue*, 622 N.W.2d 302, 304 (Iowa 2001) (citations omitted); see *Davis*, 969 N.W.2d at 788 (noting “[s]ubstantial compliance is sufficient”).

Here, in addition to his attorney providing a long explanation of Rees’s problems and need for treatment, we find that Rees was afforded an opportunity to add to that information. Rees apologized and discussed his desire to participate in treatment that would involve maintaining his medication protocol, which he asserted would change his prior behavior. Additionally, Rees detailed his request to go to a halfway house where he could continue working, leave his cell phone while he was at work, and start taking SOTP classes. He said he was unaware that he could take such classes, but that he had a plan to take them through the halfway house. The court asked Rees about whether he had taken SOTP or any other classes while on probation and questioned his claim that he was unaware that he was required to do so. That the court then cast doubt on Rees’s inability to complete the classes previously, his lack of awareness about his requirement to do so, and whether he had complied with other sentencing obligations does not defeat that the court offered him a chance to volunteer mitigating information prior to that point. Because there was substantial compliance with the rule when Rees was offered and took an opportunity to volunteer information helpful to his cause, we find that there was no defect in the sentencing procedure here. We affirm the sentence imposed.

AFFIRMED.