

**IN THE COURT OF APPEALS OF IOWA**

No. 16-2091  
Filed November 22, 2017

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**TONJA ROJEAN BROWN,**  
**a/k/a TONJA ROJEAN HOLMES,**  
**a/k/a TONJA ROJEAN BROWN-HOLMES,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Joseph M. Moothart, District Associate Judge.

Defendant appeals the district court decision revoking her deferred judgment and probation and sentencing her on a conviction for third-degree fraudulent practice. **AFFIRMED IN PART, VACATED IN PART, AND REMANDED WITH DIRECTIONS.**

Zachary S. Hindman of Mayne, Arneson, Hindman, Hisey & Daane, Sioux City, for appellant.

Thomas J. Miller, Attorney General, and Sharon K. Hall, Assistant Attorney General, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Bower, JJ.

**BOWER, Judge.**

Tonja Brown, also known as Tonja Holmes or Tonja Brown-Holmes,<sup>1</sup> appeals the district court ruling revoking her deferred judgment and probation, and entering a conviction for third-degree fraudulent practice. We find the district court did not abuse its discretion in revoking Brown's deferred judgment and probation or in sentencing her to twenty days in jail. We vacate the portion of Brown's sentence relating to a fine of \$625 and remand to the district court only on this issue. We affirm the decision of the district court on all other issues raised on appeal.

**I. Background Facts & Proceedings**

On August 3, 2012, Brown was charged with fraudulent practice in the second degree. The State alleged she made false statements in order to obtain food stamps from the Iowa Department of Human Services (DHS). Brown entered into a plea agreement, and on July 25, 2014, entered an *Alford* plea to fraudulent practice in the third degree,<sup>2</sup> in violation of Iowa Code sections 234.13 and 714.11 (2011), an aggravated misdemeanor. The court accepted her guilty plea.

Brown was given a deferred judgment and placed on probation for a period of two years. She was ordered to pay a Law Enforcement Initiative (LEI) surcharge of \$125, restitution, and court costs. A civil penalty of \$625 was

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<sup>1</sup> The defendant was charged as Tonja Brown, and the deferred judgment order refers to her as Tonja Brown, a/k/a Tonja Holmes. For clarity, we will refer to her as Brown. No documents refer to her as Tonja Brown-Holmes, other than the notice of appeal.

<sup>2</sup> In an *Alford* plea, a defendant may plead guilty to an offense without admitting to the underlying facts establishing the offense. See *North Carolina v. Alford*, 400 U.S. 25, 38 (1970).

imposed but then suspended. The deferred judgment order provided, "Defendant may provide community service hours to pay fees and restitution." It also stated, "The Defendant is ordered to pay victim restitution and the Defendant may request a restitution hearing if the amount due is in dispute."

The State provided notice the losses incurred by DHS were \$2408. Brown signed an agreement to pay twenty-five dollars per month toward her obligations, beginning September 30, 2014. The court also approved the restitution plan, stating Brown was ordered to "comply with the terms of said plan and that the same is made a condition of the offender's supervision."

A report of a probation violation was filed on June 17, 2016, claiming Brown had violated the terms of her probation because she had not made any payments as required by the restitution plan or paid a Judicial District Department of Correctional Services enrollment fee of \$300. The State recommended Brown serve thirty days in jail. At the probation revocation hearing, Brown admitted she had violated the terms of her probation. She disputed the underlying facts of her conviction and the amount due to the DHS. She asked to remain on probation.

The district court stated, "A probation revocation hearing is not the time or the place to collaterally attack the validity of an underlying deferred judgment or plea of guilty." The court told Brown to request a restitution hearing if she contested the amount of restitution. The court revoked Brown's deferred judgment and probation and found her guilty of third-degree fraudulent practice. Brown was sentenced to twenty days in jail, with work release, a LEI surcharge of \$125, court costs, restitution, and attorney fees. The court ordered her to pay

a fine of \$625 but then suspended the fine. Brown was ordered to begin paying fifty dollars per month on her obligations, beginning January 1, 2017. Brown now appeals the revocation of her deferred judgment and sentence.

## **II. Revocation of Deferred Judgment**

Brown claims the district court abused its discretion by revoking her deferred judgment and probation. She states she substantially complied with the requirements of her probation, to the best of her ability. Brown claims it was not clear how much she was supposed to be paying in restitution. She also claims she was unable to fulfill her financial obligations due to financial difficulties.

A district court has discretion in determining whether to revoke a deferred judgment, and our review is for an abuse of discretion. See *State v. Liddell*, 672 N.W.2d 805, 815 (Iowa 2003). The State must establish a violation of the probation agreement by a preponderance of the evidence. *State v. Dolan*, 496 N.W.2d 278, 280 (Iowa Ct. App. 1992). A defendant's admission of guilt is sufficient to establish a factual basis for a revocation. *Id.*

At the revocation hearing, Brown admitted she had not made any payments, as required by the restitution plan, and therefore, had not complied with the terms of her probation. Brown's complaints about her underlying conviction and the amount of restitution do not change the conclusion she violated the rules of the probation agreement. We determine the district court did not abuse its discretion in revoking her deferred judgment and probation.

## **III. Sentencing**

Brown next claims the district court abused its discretion by sentencing her to twenty days in jail. She states the court should have permitted her to

remain on probation. She claims it was unreasonable for the court to sentence her to jail based on her failure to pay her financial obligations, which she asserts arose from financial difficulties. She states she substantially complied with the terms of her probation.

Our review of a district court's sentencing decision is for the correction of errors at law. *State v. Letscher*, 888 N.W.2d 880, 883 (Iowa 2016). "We will not reverse the decision of the district court absent an abuse of discretion or some defect in the sentencing procedure." *Id.* There is an abuse of discretion when the grounds for the court's decision are clearly untenable or unreasonable. *State v. Hopkins*, 860 N.W.2d 550, 553 (Iowa 2015).

Brown had been on probation for two years but did not make any effort to pay her financial obligations to the State. The district court stated:

You were required to comply with a plan of payment while you were on supervision, and, as indicated by the State and the department, you paid absolutely nothing on court debt. Even if you were unclear as to the amount of victim restitution or you intended to request a hearing, you were still required to make a good faith effort to comply with a plan of payment for the balance of the court debt.

We find the district court did not abuse its discretion by determining a continuation of probation was not appropriate under the facts in this case and by sentencing Brown to twenty days in jail, with work release.

#### **IV. Fine**

In the deferred judgment order, the court imposed a civil penalty of \$625 pursuant to section 907.14 but suspended the fine. In the sentencing order after Brown's probation revocation, the court again imposed a fine of \$625 and suspended it. Brown claims the court improperly failed to reduce the second fine

of \$625 by the amount of the civil penalty previously imposed. The State concedes this point, based on section 908.11(5). See *State v. Nail*, 743 N.W.2d 535, 545 n.3 (Iowa 2007) (noting section 908.11(5) “reduces the fine in a revoked deferred judgment by the amount of the civil penalty previously assessed”).

“Generally, in criminal cases, where an improper or illegal sentence is severable from the valid portion of the sentence, we may vacate the invalid part without disturbing the rest of the sentence.” *State v. Keutla*, 798 N.W.2d 731, 735 (Iowa 2011). We vacate the portion of Brown’s sentence relating to the fine of \$625 and remand to the district court only on the matter of the fine for the entry of an order in accordance with section 908.11(5). We affirm the decision of the district court on all other issues raised on appeal.

**AFFIRMED IN PART, VACATED IN PART, AND REMANDED WITH DIRECTIONS.**