IN THE COURT OF APPEALS OF IOWA

No. 17-0495
Filed November 22, 2017

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMON DARREL CLAYTON,
Defendant-Appellant.

Appeal from the Iowa District Court for Webster County, Thomas J. Bice, Judge.

Jamon Darrel Clayton appeals his sentences for robbery in the second degree and going armed with intent. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, and Louis S. Sloven, Assistant Attorney General, for appellee.

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

BOWER, Judge.

Jamon Darrel Clayton appeals his sentences for robbery in the second degree and going armed with intent. We find the district court did not consider impermissible sentencing factors, the sentence was proper in regard to Clayton's age, and his claim of systematic racial discrimination was not proven. We find the record is inadequate to determine if Clayton's counsel was ineffective. We affirm the district court and preserve his ineffective assistance claims for possible postconviction action.

I. Background Facts and Proceedings

On May 16, 2016, Clayton, seventeen years old at the time of the offense, and Thomas Meeks met Chase Monahan and rode with Monahan to his residence. Clayton and Meeks sought to purchase marijuana from Monahan, but when the three reached Monahan's residence, Meeks reached into Clayton's bag, pulled out a gun, and demanded marijuana. Monahan chased Meeks and Clayton as they ran from the house. During the pursuit, Meeks and Clayton both fired shots at Monahan.

Witnesses variously testified there were between one and eight shots fired. Police recovered six shell casings from the scene. Witnesses also testified both Meeks and Clayton fired the gun. Monahan was not injured during the shooting but did have a bullet hole in the leg of his pants. Clayton admitted to firing the gun but claimed it was only to scare Monahan and allow their escape.

On May 25, Clayton was charged with first degree robbery in violation of Iowa Code section 711.2 (2016). On February 27, 2017, Clayton was sentenced to ten years of incarceration for the lesser included offense of robbery in the

second degree and five years for going armed with intent, with the sentences to be served concurrently. Before announcing the sentence, the district court stated, "I'm limited, given the circumstances [of your firing] six to eight shots with a deadly weapon. This community demands that we have a safe environment." Clayton timely filed his appeal March 28.

II. Standard of Review

"Generally, a sentence will not be upset on appellate review unless a defendant can demonstrate an abuse of discretion or a defect in the sentencing procedure, such as the trial court's consideration of impermissible factors." *State v. Cheatheam*, 569 N.W.2d 820, 821 (Iowa 1997). "A trial court's sentencing decision is cloaked with a strong presumption in its favor, and an abuse of discretion will not be found unless a defendant shows such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Id*. However, when constitutional claims are raised, our review is de novo. *State v. Ragland*, 836 N.W.2d 107, 113 (Iowa 2013). Claims of ineffective assistance of counsel are reviewed de novo. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006).

III. Sentencing Factors

Clayton first claims the district court considered uncharged and unproven conduct in sentencing. Clayton's brief argues "the problem with the court's reasoning is that Clayton did not plead to Robbery in the first degree, which under the facts of this case necessitates the use of a weapon. Clayton pleaded guilty to Robbery in the second degree which does not have the weapon

requirement." Therefore, Clayton argues, the district court should not have considered the use of the weapon during the robbery.

"A court may not consider an unproven or unprosecuted offense when sentencing a defendant unless (1) the facts before the court show the accused committed the offense, or (2) the defendant admits it." *State v. Gonzalez*, 582 N.W.2d 515, 516 (Iowa 1998). Here, Clayton admitted he fired the gun during the escape, and therefore the district court did not err by considering the use of the weapon when determining Clayton's sentence.

IV. Age as a Mitigating Factor

Clayton next claims the district court should have conducted an individualized sentencing hearing taking into account his age at the time of the crime. Our supreme court has found juveniles are less culpable for their actions and long sentences for juveniles are unduly harsh. *See State v. Null*, 836 N.W.2d 41, 52 (Iowa 2013). Had Clayton been an adult at the time of the offense, a conviction for second-degree robbery would have required a seventy percent mandatory minimum. *See* Iowa Code § 902.12(1)(e). However, here, the district court suspended the mandatory minimum due to Clayton's age, as permitted by Iowa Code section 901.5(14). The district court is not required to conduct an individualized sentencing hearing under *Miller* when a juvenile defendant is not subject to a mandatory minimum. *State v. Propps*, 897 N.W.2d 91, 97 (Iowa 2017). We find the district court was not required to conduct an individualized hearing in the circumstances of this case.

V. Racial Disparity

Clayton lastly claims the sentence reflects racial bias. "The Equal Protection Clause requires that similarly-situated persons be treated alike." *Bowers v. Polk Cty. Bd. of Supervisors*, 638 N.W.2d 682, 689 (Iowa 2002). Clayton provides statistics from the Iowa Department of Human Rights, Division of Criminal and Juvenile Justice Planning, indicating African American defendants were more frequently convicted of robbery and less likely to receive probation when convicted. However, the statistics indicate a roughly three percent disparity between white defendants receiving probation as opposed to African American defendants. Clayton is unable to provide any proof showing those defendants are similarly situated in regard to other factors that may have influenced the court's sentencing order, such as criminal history, remorse, or family and community support.

Clayton also notes Meeks, an adult at the time of the offense, received a suspended sentence and probation. The record indicates Meeks is also African American. While the balance of evidence shows both Meeks and Clayton fired the gun, the record is devoid of any information to show Meeks and Clayton are similarly situated with regard to pleas, remorse, criminal history, or other factors. Therefore, we find there is no indication of racial disparity in the sentence in this record.

VI. Ineffective Assistance

Finally, Clayton claims trial counsel was ineffective for failing to object to the prosecutor's statements at the time of sentencing. "To prevail on a claim of ineffective assistance of counsel, the [defendant] must demonstrate both

ineffective assistance and prejudice." *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001). "If the claim lacks prejudice, it can be decided on that ground alone without deciding whether the attorney performed deficiently." *Id*. Both elements must be proved by a preponderance of the evidence. *Jones v. State*, 479 N.W.2d 265, 272 (Iowa 1991). Regarding prejudice, "the proper standard requires the defendant to show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland v. Washington*, 466 U.S. 668, 669 (1984).

We find the record before this court is not adequate to resolve these claims. Therefore, we affirm Clayton's conviction but preserve all claims of ineffective assistance of counsel for possible postconviction-relief proceedings. *See State v. DeCamp*, 622 N.W.2d 290, 296 (Iowa 2001) ("Ineffective assistance of counsel claims presented on direct appeal are typically preserved for [postconviction-relief] proceedings to allow for a full development of the facts surrounding the conduct of counsel.").

AFFIRMED.