

**IN THE COURT OF APPEALS OF IOWA**

No. 0-009 / 09-0136  
Filed February 24, 2010

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

**vs.**

**RYAN CHRISTOPHER HOPKINS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Don Nickerson,  
Judge.

Defendant appeals from the sentences imposed by the district court.

**SENTENCES VACATED; REMANDED FOR RESENTENCING.**

Eric Parrish, of Parrish, Kruidenier, Dunn, Boles, Gribble, Parrish, Gentry  
& Fisher, L.L.P., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Michael Hunter, Assistant  
County Attorney, for appellee.

Considered by Vogel, P.J., Eisenhauer, J., and Zimmer, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**EISENHAUER, J.**

In May 2008, Ryan Hopkins was charged with third degree sexual abuse and willful injury. In exchange for dismissal of the sexual abuse charges, Hopkins pled guilty to assault with intent to commit sexual abuse and willful injury. During the plea process, Hopkins admitted to having intercourse with the victim, but did not admit to sexual abuse. Hopkins appeals from the sentence imposed by the district court arguing the court erroneously considered the unproven charge of sexual abuse during his sentencing. Hopkins requests the sentences be vacated and the case remanded for resentencing.

Sentencing decisions of the district court are reviewed for errors at law. *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000). “It is a well-established rule that a sentencing court may not rely upon additional, unproven, and unprosecuted charges unless the defendant admits to the charges or there are facts presented to show the defendant committed the offenses.” *State v. Formaro*, 638 N.W.2d 720, 725 (Iowa 2002). When a defendant alleges the sentencing court improperly considered unproven crimes, “the issue presented is simply one of the sufficiency of the record to establish the matters relied on.” *State v. Longo*, 608 N.W.2d 471, 475 (Iowa 2000).

During sentencing the court addressed the victim:

Each of your hands are dirty. When I read this pre-sentence investigation, you [exotic dancer/victim] certainly went [to the hotel] for inappropriate reasons and you acted inappropriately, and things got out of hand, but they shouldn't have gotten out of hand to the point where you were beat, raped, and I do not hold to the theory that just because you are who you were, you should have been beaten and raped.

With that in mind, I'm going to impose a period of incarceration. . . .

Our task on appeal is not to second guess the decision made by the district court, but to determine if it was based on untenable grounds. *State v. August*, 589 N.W.2d 740, 744 (Iowa 1999). We conclude the district court improperly considered the sexual abuse offenses which were to be dismissed pursuant to the plea agreement when sentencing Hopkins. *See, e.g., State v. Jorgensen*, 588 N.W.2d 686, 687 (Iowa 1998).

We conclude Hopkins has met his burden to affirmatively show that the sentencing court improperly considered charges to which he did not admit and that were not otherwise proved. *See Longo*, 608 N.W.2d at 474. We affirm Hopkins's convictions, but his sentences are vacated and the case remanded for resentencing.

**SENTENCES VACATED; REMANDED FOR RESENTENCING.**