

IN THE COURT OF APPEALS OF IOWA

No. 0-044 / 09-1414
Filed February 24, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRANDY SHOPPA,
Defendant-Appellant.

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

Appeal from the sentence imposed for operating while intoxicated, third offense. **AFFIRMED.**

J. Michael Metcalf of Metcalf, Conlon & Siering, P.L.C., Muscatine, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Gary Allison, County Attorney, and Korie Shipee, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

SACKETT, C.J.

Brandy Shoppa appeals from the sentence imposed following her conviction for operating while intoxicated, third offense. She contends the court abused its discretion in not giving appropriate consideration (1) to one of its statutory sentencing options, (2) to the rehabilitation efforts she made prior to sentencing, and (3) to various mitigating factors. We affirm.

When a defendant challenges a sentence on appeal, “[d]epending upon the nature of the challenge, the standard of review is for the correction of errors at law or for an abuse of discretion.” *State v. Valin*, 724 N.W.2d 440, 444 (Iowa 2006). Challenges to the legality of a sentence are reviewed for correction of errors at law. *State v. Freeman*, 705 N.W.2d 286, 287 (Iowa 2005). Challenges to a sentence as unreasonable are reviewed for an abuse of discretion. *State v. Evans*, 671 N.W.2d 720, 727 (Iowa 2003). An abuse of discretion will be found only when a court acts on grounds clearly untenable or to an extent clearly unreasonable. *State v. Leckington*, 713 N.W.2d 208, 216 (Iowa 2006). Regarding the abuse of discretion standard in sentencing decisions, the supreme court stated:

In applying the abuse of discretion standard to sentencing decisions, 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. It is equally important to consider the host of factors that weigh in on the often arduous task of sentencing a criminal offender, including the nature of the offense, the attending circumstances, the age, character and propensity of the offender, and the chances of reform. The application of these goals and factors to an individual case, of course, will not always lead to the same sentence. Yet, this does not mean the choice of one particular sentencing option over another constitutes error. Instead, it

explains the discretionary nature of judging and the source of the respect afforded by the appellate process.

Judicial discretion imparts the power to act within legal parameters according to the dictates of a judge's own conscience, uncontrolled by the judgment of others. It is essential to judging because judicial decisions frequently are not colored in black and white. Instead, they deal in differing shades of gray, and discretion is needed to give the necessary latitude to the decision-making process. This inherent latitude in the process properly limits our review. Thus, our task on appeal is not to second guess the decision made by the district court, but to determine if it was unreasonable or based on untenable grounds.

State v. Formaro, 638 N.W.2d 720, 724-25 (Iowa 2002) (citations omitted).

Appellant contends the district court abused its discretion because “in a nutshell the factors considered by the court were just two,” appellant’s criminal history and her “poor decision making in this case.” Appellant’s argument is without merit. The court’s statements and questions during the sentencing hearing reveal a careful, considered exercise of discretion, so that the sentence imposed fits both the crime and the defendant. *See State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979) (“The punishment should fit both the crime and the individual.”).

The court gave many reasons for choosing a prison sentence. Appellant had two prior convictions for OWI and had completed treatment programs and continuing care problems more than once—apparently without a resulting change in behavior. Other alcohol-related convictions also suggest appellant has not internalized her treatment. The court was “convinced that [appellant] would commit this offense again unless we try a different approach, and that the OWI facility is the most appropriate place to do so.” Appellant’s criminal record reveals multiple traffic-related convictions, even driving while license revoked

after the current OWI conviction, evidencing a disregard for the law and for the safety of others. The court noted appellant's poor decision making in choosing to drive while intoxicated, even after two prior convictions, despite the apparent availability of other using family members who were present or other options for a ride home. The presentence investigation recommended incarceration to address appellant's needs of "acceptance of law-abiding behavior, abstinence from alcohol, gainful employment, sound management of finances." Also included in the court's reasons for the sentence were appellant's employment history, the nature of the offense, her financial circumstances, and her need and potential for rehabilitation.

We conclude the district court properly exercised its discretion in choosing the sentence tailored for appellant's circumstances that would "best accomplish justice for society and for [appellant]." See *State v. Mai*, 572 N.W.2d 168, 170 (Iowa Ct. App. 1997). Although the court clearly did not give the same weight to various factors that appellant argues it should have, the court's choice of sentence was not based "on grounds or for reasons clearly untenable," nor was its choice "clearly unreasonable" under the circumstances before it. See *Leckington*, 713 N.W.2d at 216 (stating standards for determining an abuse of discretion).

AFFIRMED.