

IN THE COURT OF APPEALS OF IOWA

No. 0-066 / 09-1051
Filed February 24, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

OFELIA PEREZ,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jon C. Fister,
Judge.

The defendant appeals from the sentence imposed following her *Alford*
plea to the charge of possession of a controlled substance (marijuana) with intent
to deliver while within one thousand feet of a school. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Arthur Adams,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant
Attorney General, Thomas J. Ferguson, County Attorney, and Brad Walz,
Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

MANSFIELD, J.

Ofelia Perez appeals from the suspended five-year sentence imposed following her *Alford* plea to the charge of possession of a controlled substance (marijuana) with intent to deliver while within one thousand feet of a school. See Iowa Code §§ 124.401(1)(d), 124.401B (2007). She claims the district court abused its discretion in denying her request for a deferred judgment. We find no abuse of discretion and affirm.

I. Background Facts and Proceedings.

On July 29, 2008, Perez was charged by trial information with possession of a controlled substance with intent to deliver while within one thousand feet of a school and while in immediate possession or control of a firearm. The minutes of testimony showed that Perez was one of the occupants of a house in Waterloo from which marijuana was being distributed. When a search warrant was executed, loose marijuana, blunts, packaging materials, scales, \$3500 in cash, and two firearms were found. In Perez's bedroom, the officers found marijuana, plastic sandwich bags, a marijuana grinder, and a digital scale.

On June 22, 2009, Perez's plea and sentencing hearings were held. Pursuant to a plea agreement, Perez entered an *Alford*¹ plea to the charge of possession of marijuana with intent to deliver while within one thousand feet of a school in violation of Iowa Code sections 124.401(1)(d) and 124.401B. In return, the State agreed to request the firearms enhancement be dismissed, to request no additional time for the school-zone enhancement, and to recommend a

¹ See *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167, 27 L. Ed. 2d 162, 171 (1970) (holding "express admission of guilt . . . is not a constitutional requisite to the imposition of [a] criminal penalty").

sentence no more severe than a suspended sentence. Perez was free to request a deferred judgment.

Perez then requested to be sentenced immediately. A presentence investigation report had previously been completed. The State recommended that Perez be sentenced to a suspended five-year prison term because of the seriousness of the offense, Perez's sporadic work history, and her substance abuse issues. Perez requested a deferred judgment because she did not have a criminal record, had completed a substance abuse evaluation and a six-week treatment program, and was currently employed. She also pointed out that she had cooperated with the State by agreeing to delays in her case in order for the other defendants' trials to occur before her plea hearing, and that she had been on pretrial release for eleven months without any complications. The court then addressed Perez:

Well, I think the problem, Miss Perez, that the State sees is that this was a substantial, large-scale drug distribution operation and you certainly knew of it. The evidence was in your bedroom. And what kind of upstanding citizens involve themselves in that kind of activity, I think is what the State is asking.

A colloquy between the court and Perez regarding her level of knowledge and participation in the offense then ensued. Thereafter, the district court sentenced Perez to five years in prison, suspended the prison term, and placed Perez on probation. The written ruling that followed stated the court considered the nature of the crime committed, the defendant's age and past record, and the recommendation in the presentence investigation report, and that "this sentence is most likely to protect society and rehabilitate the defendant." Perez appeals and argues the district court abused its discretion in imposing sentence.

II. Standard of Review.

We review sentencing for correction of errors at law. Iowa R. App. P. 6.907 (2009); *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). When a sentence falls within the statutory limits, the sentence will not be disturbed on appeal unless the defendant shows an abuse of discretion or a defect in the sentencing procedure. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). Sentencing decisions are cloaked with a strong presumption in their favor, and an abuse of discretion will only be found when discretion is exercised on grounds that are clearly untenable or to extent clearly unreasonable. *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000); *Thomas*, 547 N.W.2d at 225.

III. Analysis.

Perez alleges that the district court abused its discretion by relying on just one factor—the circumstances of the offense—in sentencing her. When a sentence is not mandatory, the district court must exercise its discretion in determining what sentence to impose and additionally demonstrate this exercise of discretion by stating on the record the reasons for the particular sentence imposed. *Thomas*, 547 N.W.2d at 225; see also Iowa R. Crim. P. 2.23(3)(d). Generally, the district court is not required to give the reasons for rejecting particular sentencing options. *Thomas*, 547 N.W.2d at 225.

In applying discretion, the court should weigh and consider all pertinent matters in determining proper sentence, including the nature of the offense, the attending circumstances, defendant's age, character and propensities and chances of his reform. The courts owe a duty to the public as much as to defendant in determining a proper sentence. The punishment should fit both the crime and the individual.

State v. August, 589 N.W.2d 740, 744 (Iowa 1999) (citations omitted); see also Iowa Code § 907.5. Thus, “[t]he nature of the offense alone cannot be determinative of a discretionary sentence.” *State v. Dvorsky*, 322 N.W.2d 62, 67 (Iowa 1982); see also *State v. Johnson*, 513 N.W.2d 717, 719 (Iowa 1994). In determining whether the district court considered the relevant factors in imposing a sentence, we look to all parts of the record to find supporting reasons, including reasons stated during the sentencing hearing and the reasons given in the written judgment entry. *State v. Lumadue*, 622 N.W.2d 302, 304 (Iowa 2001); *State v. Boltz*, 542 N.W.2d 9, 11 (Iowa Ct. App. 1995).

Upon our review of the record, we find that Perez’s claim fails. The record demonstrates the district court did not rely solely on the circumstances of the offense, but rather considered and weighed numerous appropriate factors in arriving at a sentence. During the hearing, the district court asked Perez about her personal information—age, education, and health. Both the State and Perez set forth their sentencing requests, which included discussion of Perez’s character, employment history, and substance abuse issues and treatment. Perez informed the district court, “The time that I did spend in jail was life changing. And I understand that the [S]tate believes that [the crime] is within my character, but it is not within my character.” After an exchange between the district court and Perez regarding the nature of the offense and Perez’s participation, the district court noted that this was a “large-scale operation” and Perez was attempting “to distance” herself from the crime. To its credit, the district court engaged in direct, face-to-face discussion with the defendant about her role in the charged offense. Yet, the defendant now tries to take that part of

the sentencing proceeding out of context to argue it was *all* the district court considered. To the contrary, in its written ruling that followed, the district court stated it considered the nature of the crime committed, Perez's age and past record, and the recommendation in the presentence investigation report, and imposed a sentence that is most likely to protect society and rehabilitate Perez. The district court clearly considered numerous factors and specifically stated so. We find no abuse of discretion and affirm.

AFFIRMED.