

IN THE COURT OF APPEALS OF IOWA

No. 0-207 / 09-0578
Filed May 12, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRIAN LEE LINEBACH,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Artis Reis, Judge.

Defendant appeals his conviction and sentencing for second-degree theft.

AFFIRMED.

Cathleen J. Siebrecht of Siebrecht Law Firm, Des Moines, for appellant.

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

Considered by Vogel, P.J., Eisenhauer, J., and Miller, S.J.*

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

EISENHAUER, J.

In the fall of 2007, Brian Linebach checked out forty books and DVDs from the Ankeny library and failed to return them. In February 2008, Linebach was charged with second-degree theft. In April 2008, the district court accepted Linebach into the Polk County pretrial drug court diversion program after he signed a plea agreement, an intensive supervision contract, and a written confession to second-degree theft (“[t]he total value was over \$1,000 of all of the materials taken”).

In December 2008, Linebach was removed from the program for noncompliance and prosecution of his case resumed. After a February 2009 bench trial, Linebach was convicted of second-degree theft, sentenced to an indeterminate term of five years in prison, and ordered to pay \$1079.73 in restitution. This appeal followed.

Linebach first argues there is insufficient evidence to establish the value of the stolen items exceeds \$1000.00. We review for errors at law. *State v. Rohm*, 609 N.W.2d 504, 509 (Iowa 2000). He argues three items with a replacement cost of \$79.89, although damaged, were returned to the library and should not be included in calculating the total value of the stolen property. Linebach asserts the \$999.84 resulting valuation (\$1079.73-\$79.89) is less than the \$1000 required for second-degree theft. See Iowa Code § 714.2(2) (2007). Assuming without deciding the damaged items should be subtracted, Linebach’s argument is without merit due to his miscalculation of the three item’s value. The correct

valuation is \$71.93, which, when subtracted, results in a valuation of \$1007.07, meeting the statutory limits for second-degree theft.

Linebach also argues the court erred in not accepting his brother's testimony the stolen items could have been replaced at a lower cost than \$1000 by using internet resources. We agree with and adopt the district court's resolution of this issue:

The Library Director presented credible evidence on behalf of the State in support of her valuation of the items taken. The replacement cost to the library of the items exceeded \$1,000.

. . . Defendant's brother presented hearsay evidence of the cost of some items. The testimony, even if it were admissible, would not have rebutted the library's logical and business-based reasons for their purchasing practices. [Linebach] chose to take items from the Library, not from the Half-Price Book Store. He should not complain about his victim's purchasing practices.

Second, Linebach argues the court abused its discretion in sentencing him to five years in prison claiming the court "only gave vague and general reasons" and gave improper weight to "a need to get his medication regulated." "Sentencing decisions of the district court are cloaked with a strong presumption in their favor." *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). The sentencing court stated:

In determining what sentence should be imposed for [Linebach] the Court has considered the nature and circumstances of the crime. The Court considered the information contained in the presentence investigation report, including the corrections outlined by defense counsel. The Court considered [Linebach]'s age, his prior criminal history, interventions in the past and programs that [Linebach] has been offered. The Court has considered the need to provide the maximum protection for the community from further offenses by [Linebach], and the Court has considered the need for [Linebach] to have the maximum opportunities for rehabilitation. The Court does not believe that probation would meet those goals. Particularly [Linebach] has a need to get his medication regulated.

He has a need to have the opportunity to have some help so that he's not engaged in any behavior that lands him in the Polk County Jail again.

Our review shows no abuse of discretion in the court's decision to impose a term of incarceration. See *State v. Alloway*, 707 N.W.2d 582, 584 (Iowa 2006).

Finally, Linebach contends he received ineffective assistance of counsel. We review de novo. *State v. Lane*, 726 N.W.2d 371, 392 (Iowa 2007). He decries his counsel's failure to "point out the fact that three of the items included in calculating the total value of the theft had, in fact, been returned to the library" making the value of the stolen property less than \$1000. As detailed above, even if we assume subtraction of these three items is appropriate, the total value of property stolen still exceeds \$1000. Linebach's counsel was not ineffective because there is no duty to pursue a meritless issue. See *State v. Griffin*, 691 N.W.2d 734, 737 (Iowa 2005).

AFFIRMED.