

**IN THE COURT OF APPEALS OF IOWA**

No. 0-348 / 09-1022  
Filed June 16, 2010

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

**vs.**

**JESSE WAYNE ERGER,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Black Hawk County, Kellyann M. Lekar, Judge.

Jesse Erger appeals his sentence for possession of a controlled substance. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Thomas Gaul, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad P. Walz, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ. Tabor, J., takes no part.

**VOGEL, P.J.**

Jesse Erger appeals from the entry of judgment and sentence on the jury's finding of guilt for possession of a controlled substance in violation of Iowa Code section 124.401(5) (2007).

We will not upset the sentence on appellate review unless Erger 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. Kramer*, 773 N.W.2d 897, 898 (Iowa Ct. App. 2009).

During a routine traffic stop, Erger was found in possession of a large amount of heroin. Erger admitted at trial that the heroin was for his personal use. He testified to his prior five years of drug use and failed attempts at both inpatient and outpatient rehabilitation. At the sentencing hearing, Erger requested a deferred judgment, which the court denied. Instead, the court entered judgment on the verdict, imposed an "indeterminate term of incarceration, not to exceed one year," but suspended the sentence and placed Erger on supervised probation. In response to a final question by Erger during the sentencing colloquy, the court stated, "And given your past history and the reasons that our legislature set for a deferred judgment, I do not feel you qualify." Erger asserts the court abused its discretion in stating on the record that he did not "qualify" for a deferred judgment, arguing the court incorrectly found he was disqualified from being granted a deferred judgment.

A deferred judgment is defined in the Iowa Code as "a sentencing option whereby both the adjudication of guilt and the imposition of a sentence are deferred by the court." Iowa Code § 907.1(1); *State v. Farmer*, 234 N.W.2d 89,

92 (Iowa 1975). When selecting a sentencing option, a sentencing court is required to state on the record its reasons for doing so. *State v. Mai*, 572 N.W.2d 168, 170 (Iowa Ct. App. 1997). “A statement may be sufficient, even if terse and succinct, so long as the brevity of the court’s statement does not prevent review of the exercise of the trial court’s sentencing discretion.” *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989). 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).

In giving its reasons for denying the deferred judgment, the district court made clear that while it understood Erger’s motivation behind the requested deferred judgment and acknowledged his recent improvements, these factors alone were not sufficient to warrant granting his request, stating:

I have to find that a deferred judgment is not appropriate in this matter, given your past history, given the nature of what a deferred judgment is set up for. And [the county attorney] already hit on this, but this certainly is what was running through my mind as well. Deferred judgments are situations where a person has acted out of character for themselves and has a one-time slip-up. And while you may not have any prior convictions, the record, even through your own testimony, is certainly replete with your past history of drug use, your past history of significant drug use. And certainly through your two attempts at rehabilitation you have gained the knowledge of the criminality of your drug use and the potential for criminal charges and I simply cannot find that this was a one-time out-of-character situation that would justify a deferred judgment.

The reasoning of the court does not suggest that it believed Erger was statutorily disqualified from a deferred judgment; rather, based on circumstances specific to Erger, deferring judgment was not warranted. We do not find the court relied on any impermissible factors in entering judgment and imposing sentence, and

hence, find no abuse of discretion in denying Erger's request for a deferred judgment.

**AFFIRMED.**