

IN THE COURT OF APPEALS OF IOWA

No. 0-428 / 09-1434
Filed June 30, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MYNOR RANDOLFO GARCIA,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Kristen Hibbs,
Judge.

Defendant appeals the court's sentence of incarceration. **AFFIRMED.**

Rockne O. Cole of Cole & Vondra, L.L.P., Iowa City, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney
General, Janet M. Lyness, County Attorney, and Elizabeth Beglin, Assistant
County Attorney, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ. Tabor,
J., takes no part.

EISENHAUER, J.

Mynor Garcia appeals his sentence contending the court failed to provide adequate reasons for the sentence imposed.

In June 2008, the car Garcia was driving struck two vehicles stopped at a stop light. Garcia left the accident scene. In July 2009, following a trial on the minutes, Garcia was found guilty of operating while intoxicated, third offense. Garcia had prior OWI convictions in 2001 and 2003. Additionally, Garcia was convicted of fifth-degree theft in 2003, and driving while barred in 2005.

During the August 2009 sentencing hearing, the State recommended a five-year indeterminate term of imprisonment with placement in a residential correctional facility. Garcia requested a thirty-day suspended jail sentence. The following exchange occurred between the court and Garcia's attorney:

The Court: Well, what has he done about that on his own?
 A. It is my understanding he has attempted an evaluation but I think he can address that. It's my understanding he was not able to get a substance abuse evaluation set up, he had some logistical problems in Wapello County. . . .

...

The Court: So even though this case has been continued several times, he has still not achieved a substance abuse evaluation? A. That is my understanding, Your Honor.

Through an interpreter, Garcia explained:

For the evaluation for abuse of alcohol, I was going in Burlington, where I live, and I don't remember the name of that guy very well, and I was going for about two months . . . but they transferred the classes to Wapello, and I can't go there because I can't drive and I didn't have anybody to take me.

But I believe that they will reopen them at the college there in Burlington and then I will go back because I can just ride my bike to them.

The court ordered a brief recess for both counsel to inquire about the wait time and availability if Garcia was “ordered to prison with the OWI program.” The court explained: “That will add additional information for the Court’s consideration because I want to consider both options, but I would like to be better informed.” After the recess the State stated the Ottumwa facility would be restarting its program and Garcia’s placement “would be anywhere from the beginning to the middle of September and that he would be one of the first people to be into the program.”

The court sentenced Garcia to “an indeterminate term not to exceed five years with placement in an OWI facility,” with a target date for treatment of “the first part of September to mid-September.” The court allowed Garcia to present himself “at the OWI facility at such time as directed by the Department of Corrections.” The court explained:

The reasons for this sentence include consideration of the nature and the circumstances of the offense [and Garcia’s] criminal record. The Court believes this will offer you an opportunity for rehabilitation.

Mr. Garcia, you stated that alcoholism is a disease, and the Court agrees. But as with any disease, it should not go untreated. And at this point in time, I don’t see any evidence of you doing anything to assist yourself with this disease.

Garcia: I’m attending my church, because I stopped going, and I went back and the pastor is actually giving me counseling.

The Court: That’s great. But you need to address alcohol treatment, and I think I indicated it pretty clearly; I’m frustrated that you have not yet received an evaluation. And I understand the reasons you have explained here, but you need to get in treatment.

And I applaud your pastor for helping you, but you need some alcohol treatment. This will hold you accountable for your offense.

Additional reasons for the court's sentence were listed in the sentencing order filed August 21, 2009: Garcia's age, his need and potential for rehabilitation, the sentence "should act as a deterrent against future offenses by [Garcia] and others," and the sentence "will provide for the protection of the community."

On appeal Garcia claims the court did not provide sufficient reasons for the sentence¹ and the court improperly relied upon Garcia's failure to obtain a substance abuse evaluation, arguing such reliance is similar to improper reliance "upon uncharged post-offense conduct."

Our review is for correction of errors at law. *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000). "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). We review the court's sentencing decision for an abuse of discretion, which "is found only when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Id.* Additionally, "a sentencing court need only explain its reasons for selecting the sentence imposed and need not explain its reasons for rejecting a particular sentencing option." *State v. Ayers*, 590 N.W.2d 25, 28 (Iowa 1999).

The sentencing judge listed several reasons for the sentence in this case as indicated above. We have reviewed the transcript of the sentencing hearing

¹ Garcia filed a supplemental appendix containing three documents not included in the record at the time of sentencing. These outside-the-record documents are not considered in this appeal.

and the sentencing order and conclude the reasons stated by the district court were adequate to demonstrate a proper exercise of discretion.

There was also no abuse of discretion in the court's requesting information about Garcia's attempts to obtain a substance abuse evaluation. Garcia's sentence is therefore affirmed.

AFFIRMED.