

IN THE COURT OF APPEALS OF IOWA

No. 0-561 / 09-1858
Filed August 25, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ALICIA LYNETTE JOINER,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Thomas Preacher,
District Associate Judge.

A defendant appeals the revocation of her deferred judgment and the
imposition of judgment and sentence on a charge of possession of cocaine.

**AFFIRMED IN PART, VACATED IN PART, AND REMANDED FOR
RESENTENCING.**

Mark C. Smith, State Appellate Defender, and Martha J. Lucey, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney
General, Michael J. Walton, County Attorney, and Kelly Cunningham, Assistant
County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.
Tabor, J., takes no part.

VAITHESWARAN, P.J.

Alicia Joiner appeals the revocation of her deferred judgment and the imposition of judgment and sentence on a charge of possession of cocaine. She contends “the district court violated [her] due process rights by failing to provide a sufficient written or oral statement showing the reasons for the revocation of the deferred judgment.”

I. Background Proceedings

The State charged Joiner with possession of cocaine with intent to deliver as well as a drug tax stamp violation. The State and Joiner subsequently executed a written plea agreement under which Joiner agreed to plead guilty to possession of crack cocaine and the State agreed to dismiss the drug tax stamp violation. The district court accepted the plea. The court subsequently entered an order deferring judgment. See Iowa Code § 907.3(1) (2007) (“With the consent of the defendant, the court may defer judgment and may place the defendant on probation upon conditions as it may require.”). Under that order, entry of judgment and pronouncement of sentence was deferred, and Joiner was placed on unsupervised probation for one year subject to several terms and conditions, including a substance abuse evaluation, cooperation with treatment if indicated, and furnishing of evidence of the evaluation and treatment.¹

Joiner did not submit to the evaluation within the one-year probation period. She was granted two extensions but still did not obtain the evaluation. On the expiration of these extensions, the district court entered an order finding that Joiner “failed to comply with the terms of the deferred judgment in this case

¹ The drug tax stamp charge was dismissed.

by . . . failure to complete eval and treatment.” The court revoked her deferred judgment. In a separate order entered on the same day, the court imposed judgment and sentence for possession of cocaine. The sentencing order contained boilerplate “reasons for this sentence,” as follows: “the defendant’s prior criminal history, or lack thereof; age and circumstances; to maximize rehabilitation of the defendant and deter future misconduct.” Additionally, the order stated “in light of no further drug violations in past year, there is no requirement of a substance abuse evaluation.”

II. Finding of Violation of Terms of Deferred Judgment Probation

“[D]ue process requires written findings by the court showing the factual basis for the revocation.” *State v. Lillibridge*, 519 N.W.2d 82, 83 (Iowa 1994). Joiner concedes the district court made a finding that she had not completed an evaluation and treatment. However, she contends the district court was required to make an additional finding as to “why the court decided revocation was the proper action.” For this proposition, she relies on *Patterson v. State*, 294 N.W.2d 683 (Iowa 1980).

Patterson involved the revocation of probation following the court’s imposition of a criminal sentence. *Patterson*, 294 N.W.2d at 684. In that context, the Iowa Supreme Court required two sets of findings: (1) whether one or more conditions of probation were in fact violated and (2) whether the defendant needed to be recommitted to prison or whether other steps could be taken to protect society or improve the chances of rehabilitation. *Id.* Joiner suggests these same two findings had to be made to support the district court’s revocation

of her deferred judgment for failure to comply with the deferred judgment probation conditions. We believe Joiner reads too much into *Patterson*.

As noted at the outset, the district court deferred the entry of judgment and sentence pending Joiner's completion of the terms and conditions of probation. In revoking the deferred judgment, the court made a specific finding that Joiner did not complete one of the conditions of probation. This was the only finding that was required to revoke Joiner's deferred judgment. The additional finding articulated in *Patterson* was a requisite to imposition of the criminal sentence, not a predicate to the revocation decision. See *Lillibridge*, 519 N.W.2d 83 (noting that once probation is revoked, criminal judgment and sentence must be imposed).² For this reason, we conclude the district court's single finding that Joiner violated the terms of her deferred judgment probation was sufficient to support its order revoking the deferred judgment.

This brings us to the district court's separate order imposing judgment and sentence. In imposing judgment and sentence following revocation of a deferred judgment, the district court is required to comply with the rules of criminal procedure relating to sentencing. *Id.* One of those rules requires the court to "state *on the record* its reasons for selecting a particular sentence." Iowa R. Crim. P. 2.23(3)(d) (emphasis added). As Joiner correctly points out, this rule was not followed, as the sentencing proceeding was not reported and there was no written waiver of the record. While Joiner maintains that this omission calls

² Where the terms of probation are the condition for the deferred judgment, Iowa Code sections 907.1 and 907.3 apply, although the court is permitted to "proceed as provided in chapter 908" (governing violations of probation and parole) if the deferred judgment probation is violated. Iowa Code § 907.3(1).

the revocation decision into question, our discussion of *Patterson* above should clarify our view that the omission only affects the sentence imposed following revocation of the deferred judgment. With respect to the sentence, the absence of a record prevents us from evaluating the boilerplate sentencing reasons provided by the district court and determining how the probation violations “influenced the court to select the sentence it did.” *Lillibridge*, 519 N.W.2d at 83; *cf. State v. Kirby*, 622 N.W.2d 506, 511 (Iowa 2001) (“We believe the court’s statement of reasons for revoking the probation sufficiently complies with Rule [2.23]’s requirement of a statement of reasons for the sentence imposed.”). For that reason, we reverse and remand for resentencing.

III. Disposition

We affirm the district court’s finding of a violation of the deferred judgment probation conditions and the court’s revocation of Joiner’s deferred judgment. We vacate the district court’s order imposing sentence and remand for resentencing in accordance with the provisions of Iowa Rule of Criminal Procedure 2.23.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED FOR RESENTENCING.