

IN THE COURT OF APPEALS OF IOWA

No. 0-599 / 10-0494
Filed September 9, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRANDON ROBERT STRICKLAND,
Defendant-Appellant.

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

Brandon Robert Strickland appeals contending the district court abused its discretion in sentencing him to the maximum prison sentence. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Michael J. Walton, County Attorney, and Robert Bradfield, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ. Tabor, J., takes no part.

DOYLE, J.

Brandon Robert Strickland appeals from a judgment and sentence following his guilty plea to a charge of theft in the third degree in violation of Iowa Code section 714.2(3) (2009). Strickland argues the district court abused its discretion in imposing the maximum prison sentence without an adequate explanation. Having failed to produce any sort of record of the sentencing proceeding, Strickland waived error on his claim. Finding no clear abuse in the record provided, we affirm.

Strickland, who was represented by counsel, filed a written guilty plea to the aggravated misdemeanor. He also filed an application waiving his right to file a motion in arrest of judgment and requested that he be sentenced the same day. The court accepted Strickland's guilty plea and imposed the maximum sentence of two years in prison along with restitution and repayment of attorney fees. The sentencing proceeding was not reported. For its written judgment and sentencing order, the court utilized a pre-printed form which included the following statement:

The reasons for this sentence are the defendant's prior criminal history, or lack thereof; age and circumstances; to maximize rehabilitation of the defendant and deter future misconduct. Other reasons: [This area was left blank].

Strickland appeals, contending the district court abused its discretion by failing to adequately state its reasons for the sentence imposed. He urges us to vacate the sentence and remand for resentencing. Our review of the district court's sentencing decision is for abuse of discretion. *State v. Evans*, 671 N.W.2d 720, 727 (Iowa 2003).

Iowa Rule of Criminal Procedure 2.23(3)(d) (2009) requires a trial court to state on the record its reasons for selecting a particular sentence. The court's statement of reasons may be either written or oral. *State v. Alloway*, 707 N.W.2d 582, 584-585 (Iowa 2006), *overruled on other grounds by State v. Johnson*, 784 N.W.2d 192, 197-98 (Iowa 2010). The purpose of this requirement is to give appellate courts the opportunity to review the discretionary nature of the sentencing. *Id.* at 584.

When the reasons for a particular sentence are not established by the record, we are normally required to remand the case for resentencing. *Id.* at 585. But, “[i]t is a defendant’s obligation to provide this court with a record affirmatively disclosing the error relied upon.” *State v. Mudra*, 532 N.W.2d 765, 767 (Iowa 1995). We will not permit a defendant to raise an issue without attempting to give the court a record upon which to decide the issue. *See Alloway*, 707 N.W.2d at 586. We cannot speculate as to what took place.

When the absence of a record of the reasons for a sentence includes the absence of a transcript of the sentencing proceeding, a defendant has several additional methods to create a record. Our rules of criminal procedure allow a defendant to create a record by means of a bill of exceptions under rule 2.25 after sentencing, or by filing a supplemental statement of the record under Iowa Rule of Appellate Procedure 6.806(1) after an appeal has been filed. *See also id.* (citing then numbered appellate rule 6.10(3)); *Mudra*, 532 N.W.2d at 767. A defendant’s failure to utilize any of these methods to produce a record serves as a waiver of the defendant’s challenge to the district court’s failure to state the reasons for the sentence it imposed. *Alloway*, 707 N.W.2d at 585-86 (stating a

defendant will not be permitted to raise an issue on appeal concerning an abuse of discretion in sentencing without attempting to give the court a record upon which to decide the issue); *Mudra*, 532 N.W.2d at 766-67. Thus, in *Mudra*, our supreme court determined the defendant had waived error on his claim of the district court's abuse of discretion in failing to give reasons for the sentences, because the defendant waived transcription of the proceedings and failed to use other methods to produce a record. *Mudra*, 532 N.W.2d at 766-67.

Here, there is no written plea agreement in the record. There is no transcript of the sentencing proceedings. Strickland failed to produce a record by other means either through a bill of exceptions after sentencing or by filing a supplemental statement of the record with this appeal. See Iowa R. Crim. P. 2.25; Iowa R. App. P. 6.806(1). Strickland's failure to produce a record serves as a waiver of his contention that the district court erred by failing to state on the record its reasons for the sentence. *Alloway*, 707 N.W.2d at 586. Finding no clear abuse in the record that was provided to us, we affirm the district court.

AFFIRMED.