

**IN THE COURT OF APPEALS OF IOWA**

No. 0-737 / 09-1941  
Filed November 10, 2010

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

**vs.**

**SHAWN PATRICK SCHAFFER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Douglas F. Staskal,  
Judge.

A defendant argues the district court abused its discretion in declining to  
suspend his sentence. **AFFIRMED.**

Jesse A. Macro, Jr. of Gaudineer, Comito & George, L.L.P., West Des  
Moines, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney  
General, John P. Sarcone, County Attorney, and David Porter, Assistant County  
Attorney, for appellee.

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

**VAITHESWARAN, P.J.**

Shawn Schaffer was found guilty of eluding police (a class D felony), operating a motor vehicle while intoxicated (second offense), and driving with a revoked license. The district court sentenced Schaffer to an indeterminate term of imprisonment not to exceed five years on the eluding charge, to be served concurrently with a term of two years on the OWI charge and one year for driving with a revoked license.

On appeal, Schaffer argues the district court abused its discretion in declining to suspend his eluding sentence. See *State v. Floyd*, 466 N.W.2d 919, 924 (Iowa Ct. App. 1990) (setting forth standard of review). He does not dispute that the sentence for eluding fell within the statutory limits for a class D felony. See Iowa Code §§ 321.279(3) (2009) (classifying eluding in a certain manner as a class D felony), 902.9(5) (stating prison sentence for a class D felon who is not a habitual offender shall be no more than five years). Instead, he contends the court should have considered as mitigating factors his military service and his efforts to treat his acknowledged addiction to alcohol.

The sentencing court considered these factors, stating in pertinent part:

This is an extremely difficult case for the court, as a lot of these cases are. But let me start out—you may be seated—by saying that this isn't about Sergeant Schaffer's service. It's not about whether he's a good or a bad person in general. It's about him committing specific criminal offenses, and it's about me exercising my authority and judgment, not because of what happened on one—not only because of what happened on one specific night in October of 2008 but because and based on my judgment about the protection of the public's safety, the enforcement of the laws, and my estimation of the chances of rehabilitation against the risk to public safety of a particular sentence.

I appreciate your service, as does every person in this room and every person in this country. There's no question about that.

But that doesn't immunize you from responsibility to obey the laws. And you yourself said to me that you should be held to a higher standard than others, and I'm not holding you to a higher standard. But I'm certainly not going to hold you to a lesser standard either.

And, additionally, this is not just about someone who drinks alcohol and has an addiction problem, which you obviously do. This is a—this is about a person who not only has a problem with addiction to alcohol but who cannot resist, for whatever reason, driving while that person is intoxicated. This is the . . . fifth drunk driving conviction that you've had. And in addition to driving while you're drunk, in this case you attempted to elude the police.

For someone who really recognized that they have a problem—and someone who has had four OWIs should certainly recognize that they have a problem—to add to that running from the police indicates to me a person who doesn't have a conception of the danger that they're creating or of the fact that they have a serious problem with alcohol addiction.

. . . .

It was recommended that you attend a help group apparently from the VA support group, which you haven't done. After your UCS intensive outpatient you were supposed to go weekly to that aftercare, and your attorney told me that UCS said it was okay for you to go see your priest and minister instead of that. And I'll accept that as true because I don't have anything that says otherwise.

But you were also told to abstain from the use of alcohol, and you've not done that. You say that you're attending AA meetings. But as of—while you pled guilty on October 20, which was a year after this happened, which was nearly a year after you were recommended by UCS to go twice a week to AA meetings, and so at least a year later you told the PTS—or the presentence investigation reporter that you had not attended AA meetings and that you were intending to start doing that. And there's absolutely nothing I have other than to hear you say it that shows me you've been going to two AA meetings a week.

I appreciate that you're seeing your minister, and I am not saying that's not a good thing at all. But there are formal recommendations in here that you just haven't followed. Formal recommendations from treatment providers, from experts in the field, from people who the court necessarily relies on in recommending programs and behaviors that people with this problem need to participate in, and you haven't done that.

Backing up, I'm reading it and it says, "Mr. Schaffer stated that he has not participated in AA meetings and has been procrastinating but plans to secure a sponsor and begin attending."

Okay. Now, we're all here because on October 26 you were driving drunk for at least the fifth time, and you attempted to get

away from the police. And I watched the videotape of the chase, and it's a frightening thing. You were driving in the wrong lane. It's you driving 95 miles in a 30 mile-an-hour zone. It's endangering the officers who were chasing you. It was endangering other motorists. And when I look at that kind of behavior out of someone who has had four prior OWIs, who hasn't done what they're supposed to do since this happened in terms of going for treatment, AA meetings, I am frightened for the public safety and that's what this pretty much boils down to. Not to mention there is an issue here of punishment for criminal behavior.

And I could not in good conscience give someone who has this many prior drunk driving convictions a deferred judgment, especially for attempting to elude the police and that's what makes this extremely bad in my judgment and in need of serious response.

I am sorry if this is—if what I do affects your career. Unfortunately, I affect people's careers all the time by what I do. But if I were to not impose what I think are appropriate sentences, given people's behavior and their histories just because it affects their career, then I wouldn't be doing my job. And ultimately I'm not the one that's taking away your career in the military. You are. Because you are the person who has brought yourself to the position that you're in here today.

So I regret having to do this, but I feel it is the only sentence called for based upon everything that I've just said, and that is to incarcerate you. Maybe you will get out in six months or eight months or whatever, but my only hope—you're not, by the way, a young person. You're 34 or 35 years old—or 34, I guess. You're not someone who has just had a first run-in with the law. And, again, in my judgment this is the sentence that's called for.

We discern no abuse of discretion in this ruling, as the court weighed the pertinent factors and provided a detailed articulation of the reasons for the sentence. *See State v. Leckington*, 713 N.W.2d 208, 216 (Iowa 2008) (listing appropriate factors for court to consider before imposing sentence).

In reaching this conclusion, we have considered the fact that the court briefly misspoke, stating Schaffer drove ninety-five miles per hour in a thirty-mile-per-hour zone, rather than ninety miles an hour in a thirty-five-mile-per-hour zone as the record indicated. This slip of the tongue does not take away from the key

point that Schaffer drove far in excess of the posted speed limit, seriously jeopardizing the safety of the traveling public.

We affirm Schaffer's sentence.

**AFFIRMED.**