IN THE COURT OF APPEALS OF IOWA

No. 0-840 / 09-1691
Filed December 22, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MARIA ELENA GARCIA,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard II, District Associate Judge.

A defendant appeals her sentence for assault causing bodily injury. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Mark C. Smith, State Appellate Defender, and David Arthur Adams, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, Janet M. Lyness, County Attorney, and Meredith Rich-Chappel, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ. Tabor, J., takes no part.

VOGEL, J.

Following a jury trial, Maria Garcia was found guilty of assault causing bodily injury in violation of Iowa Code sections 708.1 and 708.2(2) (2009). A sentencing hearing was held, but was not transcribed.[1] On October 13, 2009, the district court entered a written judgment and sentence. Garcia was sentenced to three days in jail and a fine in the amount of $1875.[2] The following language is found on what appears to be a form order: "The Court feels the foregoing sentence will provide the maximum benefit for rehabilitation of Defendant and for the protection of the community and should act as a deterrent to Defendant, and others, to any future offenses." Additionally, Garcia was ordered to pay restitution for court-appointed-attorney fees in the amount of $900. Garcia appeals. Our review is for an abuse of discretion. *State v. Valin*, 724 N.W.2d 440, 444 (Iowa 2006); *State v. Mudra*, 532 N.W.2d 765, 766 (Iowa 1995).

Garcia asserts that the district court, utilizing "boilerplate language,"[3] did not adequately state on the record its reasons for the sentence, particularly the decision to impose the maximum fine of $1875. Iowa Rule of Criminal Procedure 2.23(3)(d) requires a sentencing court to state on the record its reason for selecting a particular sentencing option, which permits the appellate court to determine whether there has been an abuse of discretion. The State responds that Garcia has waived error on her claim because she failed to provide an

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[1] If there was any form of a record created, it was not included for our review.

[2] The fine for a serious misdemeanor under Iowa Code section 903.1(1)(b) ranges from a minimum of $315.00 to a maximum of $1875.00.

[3] It is difficult to discern what language was part of the form and what language was specifically tailored to Garcia.

adequate record for our review—the sentencing hearing was not transcribed and Garcia did not prepare a statement of the evidence or proceedings as allowed under Iowa Rule of Appellate Procedure 6.806. Alternatively, the State argues the district court did not abuse its discretion and its written statement was adequate to demonstrate its reasons for imposing the sentence.

We agree that Garcia has waived her claim. "It is a defendant's obligation to provide this court with a record affirmatively disclosing the error relied upon." *Mudra*, 532 N.W.2d at 767; *see also State v. Alloway*, 707 N.W.2d 582, 586 (Iowa 2006) (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), *overruled on other grounds by State v. Johnson*, 784 N.W.2d 192, 197–98 (Iowa 2010). When a sentencing hearing is not transcribed, our rules of procedure provide several additional methods for a defendant to create a record to permit our review. *See* Iowa R. Crim. P. 2.25 (bill of exceptions); Iowa R. App. P. 6.806(1) (supplement statement of the record). When these methods are not utilized to produce a record, the defendant waives a challenge to the district court's failure to state the reasons for the sentence it imposed. *See Alloway*, 707 N.W.2d at 585–86; *Mudra*, 532 N.W.2d at 766–67. In this case, the record does not have a transcript of the sentencing hearing and only contains the written judgment and sentencing order. *See State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989) (finding a "terse and succinct" statement may be sufficient, "so long as the brevity of the court's statement does not prevent review of the trial court's sentencing discretion"). In order to decide Garcia's claim that this statement is inadequate,

we would be forced to speculate as to what occurred at the sentencing hearing, which we will not do. *See Alloway*, 707 N.W.2d at 585–86; *Mudra*, 532 N.W.2d at 766–67. Therefore, we find Garcia's failure to provide an adequate record serves as a waiver of her contention that the district court erred by failing to state on the record its reasons for the sentence.

Additionally, Garcia asserts that the district court imposed an illegal sentence by ordering her to pay restitution for court appointed attorney fees in excess of the statutory limit of $600. *See* Iowa Code § 815.14. The State agrees that Garcia's restitution should be modified to reimburse the State for $600 in attorney fees, rather than the $900 ordered. Therefore, we affirm in part, reverse in part and remand for an order modifying the restitution order to provide for the repayment of attorney fees in the amount of $600.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.