

IN THE COURT OF APPEALS OF IOWA

No. 1-124 / 10-1355
Filed March 30, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER ANTHONY HAUSER,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Cynthia M. Moisan,
District Associate Judge.

Defendant appeals his sentence contending the district court erred and
abused its discretion by failing to state on the record the reasons for the
sentences imposed. **AFFIRMED.**

Sean P. Spellman of Spellman Law, P.C., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant
Attorney General, John P. Sarcone, County Attorney, and David Porter, Assistant
County Attorney, for appellee.

Considered by Sackett, C.J., Potterfield, J. and Miller, S.J.* Tabor, J.,
takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

SACKETT, C.J.

Defendant, Christopher Anthony Hauser, appeals from his sentence for child endangerment in violation of Iowa Code section 726.6(7) (2009) and operating a motor vehicle while under the influence of alcohol (OWI), first offense, in violation of Iowa Code section 321J.2. Hauser claims the district court erred and abused its discretion by failing to state on the record the reasons for the sentences imposed. We affirm.

I. BACKGROUND AND PROCEEDINGS. Following a fight with a roommate in the early morning hours of April 3, 2010, Hauser left home with his nine-year-old son, who was spending the night. Hauser and his son got into Hauser's vehicle and drove away. Hauser had been drinking. He was subsequently stopped by police. Implied consent was invoked and Hauser's blood alcohol concentration was .166. Hauser was placed under arrest and spent the night in jail before being released on bond.

On April 30, 2010, the State filed a trial information charging Hauser with child endangerment and OWI, first offense. Hauser ultimately entered a plea of guilty to both charges on June 25, 2010. Sentencing occurred on August 16, 2010. On the child endangerment charge, the district court sentenced Hauser to a two-year term of incarceration, with all but five days suspended, gave Hauser credit for one day served, placed him on probation for two years, and ordered him to pay a fine of \$615.00. On the OWI, first offense, charge, the district court sentenced Hauser to a one-year term of incarceration with all but three days suspended, gave Hauser credit for one day served, and placed him on probation

for one year. The court also ordered him to pay a fine of \$1250, attend the two-day OWI first offense program, and complete 80 hours of community service. Hauser timely filed his notice of appeal. He claims the district court abused its discretion by failing to state on the record the reasons for the sentences.

II. SCOPE OF REVIEW. The court will review the record for an abuse of discretion when it is alleged the district court failed to state a reason for the sentence imposed. *State v. Oliver*, 588 N.W.2d 412, 414 (Iowa 1998). An abuse of discretion is found only when “a court acts on grounds clearly untenable or to an extent clearly unreasonable.” *Id.*

III. SENTENCING. Iowa Rule of Criminal Procedure 2.23(3)(d) states in part, “[t]he court shall state on the record its reason for selecting the particular sentence.” Our courts have held the sentence explanation does not need to be detailed, but must at least provide a cursory statement to allow for the appellate courts to review the trial court’s discretionary action. *Oliver*, 588 N.W.2d at 414. While the reasons for imposing a particular sentence need to be stated on the record, the trial court “is generally not required to give its reasons for rejecting particular sentencing options.” *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). In addition, where the State and defendant have reached a plea agreement, the sentencing court does not have to state the reasons for imposing a sentence in conformity to the plea agreement, because the court is not exercising discretion, but merely giving effect to the parties’ agreement. *State v. Cason*, 532 N.W.2d 755, 756 (Iowa 1995).

In this case, the sentencing court was advised of the parties' joint plea recommendation. The prosecuting attorney advised the court as follows:

As it relates to count I, child endangerment, the state recommends Mr. Hauser be incarcerated for two years; that term be suspended, he be placed on probation for two years, a fine of \$625 be imposed, and he be required to complete eighty hours of community service.

As it relates to count II, the OWI, the State recommends Mr. Hauser be incarcerated in the Polk County Jail for one year; that sentence be suspended but for three days with credit for one day time served, two days be served in OWI first-offender class, a fine of \$1250 be imposed. That's the extent of the State's recommendation.

The court then had the following discussion with the defendant:

THE COURT: Well, I take a very dim view of driving in a motor vehicle when you're intoxicated. I take an even dimmer view when you do that when your child is in the car.

CHRISTOPHER HAUSER, DEFENDANT: Absolutely.

THE COURT: How old is the child?

CHRISTOPHER HAUSER, DEFENDANT: He'll be ten in October.

If I could explain the circumstances I was under, that would help, Your Honor.

I mean, a roommate, who is no longer my roommate, started a fight with me that night. And due to the violent nature of what had been occurring, I left. It was a major mistake. But at the time I was taking my son out of what I thought was a violent situation. And I placed him in a violent situation.

THE COURT: So you were living with a roommate?

CHRISTOPHER HAUSER, DEFENDANT: Yeah, at the time.

...

THE COURT: And this was—You had your ten-year-old spending the night or the weekend?

CHRISTOPHER HAUSER, DEFENDANT: Yeah.

THE COURT: Okay, here's the first problem with that: What are you doing drinking?

CHRISTOPHER HAUSER, DEFENDANT: Well, it had—it was late. And I was putting him to bed. And he was getting ready for bed. And I, I—And then that's, that's—I hadn't been drinking in front of him.

THE COURT: And what time did you get stopped?

CHRISTOPHER HAUSER, DEFENDANT: It was what, 12:30?

THE COURT: What if he had to go to the hospital or something? You were going to have to get in the car and do the same thing?

CHRISTOPHER HAUSER, DEFENDANT: Absolutely, absolutely, absolutely.

THE COURT: How many days did you do in jail? One?

CHRISTOPHER HAUSER, DEFENDANT: Yeah, overnight, yes.

THE COURT: Well you're going to have to do a couple more days, because this isn't just as easy as having it be your first OWI. You added the endangering the life of a child.

The court then went on to sentence Hauser on the child endangerment count to incarceration for two years, with all but five days suspended and gave him credit for the one day Hauser had already served. Hauser was given two years on probation and the court imposed a fine of \$615. On the OWI, first offense, count, the court sentenced Hauser to incarceration for one year with all but three days suspended and gave the same one day credit. The court ordered Hauser to attend the two-day OWI first offense program, pay a fine of \$1250, and complete eighty hours of community service.

With the exception of imposing the eighty hours of community service on the OWI charge instead of the child endangerment charge as the parties agreed, we note the court's sentence on the OWI charge complies with the parties' joint plea recommendation. Thus, no explanation need be given. *Cason*, 532 N.W.2d at 756.

On the child endangerment charge, the court departed from the joint plea recommendation by imposing five days incarceration instead of a full suspension. Based on the court's discussion with the defendant, we believe the court did

provide an explanation for its decision. The sentencing judge made clear she believed Hauser's decision to drink to the point of intoxication while caring for his young son was irresponsible. If an emergency arose, Hauser would be called upon to transport his son. To drink with the knowledge of this possibility was clearly reckless in the judge's opinion. Because we find the court provided sufficient explanation of her departure from the joint plea recommendation on the child endangerment count, we find no abuse of discretion.

AFFIRMED.