

**IN THE COURT OF APPEALS OF IOWA**

No. 1-152 / 10-0798  
Filed March 30, 2011

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

**vs.**

**TODD WESLEY FRIDOLFSON,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Pocahontas County, Kurt L. Wilke,  
Judge.

A defendant contends that the district court considered improper factors in  
imposing sentence for his conviction of operating while intoxicated, third offense.

**AFFIRMED.**

Jonathan S. Beaty, Fort Dodge, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant  
Attorney General, Ann Beneke, County Attorney, and Charles Gunderson,  
Assistant County Attorney, for appellee State.

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

**VAITHESWARAN, P.J.**

Todd Fridolfson pleaded guilty to operating while intoxicated, third offense, as a habitual offender. At the sentencing hearing, the district court rejected the State's recommendation of probation and sentenced Fridolfson to a prison term not exceeding fifteen years. On appeal, Fridolfson contends the district court considered improper factors in sentencing him to prison.

It is well-established that a sentencing court may not rely on unproven and unprosecuted charges unless the defendant admits to the charges or facts are presented to show the defendant committed the offenses. *State v. Formaro*, 638 N.W.2d 720, 725 (Iowa 2002). When a defendant asserts that this precept was violated, "the issue presented is simply one of the sufficiency of the record to establish the matters relied on." *State v. Longo*, 608 N.W.2d 471, 474 (Iowa 2000).

The record does not establish that the district court relied on additional, unproven charges. After discussing the contents of a presentence investigation report with Fridolfson and after mentioning the fact that Fridolfson had eight OWI convictions and one vehicular homicide conviction involving drinking while driving, the court asked for clarification about pending charges. The court's colloquy with Fridolfson was as follows:

THE COURT: Well, I'm just looking at the PSI. The PSI, of course, recommends incarceration. But I'm looking at this: I asked when did you realize you had a drinking problem and alcohol problem. According to your PSI, you've got eight separate convictions for OWI, one Vehicular Homicide involving drinking while driving. That is you killed somebody when you were driving under the influence of alcohol; correct?

THE DEFENDANT: Yes, sir.

THE COURT: All right. So this is the eighth time, not the third, but the eighth time. In addition to that, you've had a host of other, you know, involvement: Driving while license under suspension, you were placed on parole several times, your parole was revoked. And this is particularly interesting, after you were arrested for Operating While Intoxicated here in Pocahontas County, you have then been charged with driving while your license was suspended and also Possession of Cocaine; correct, that's down in Georgia?

THE DEFENDANT: Yes, sir.

THE COURT: Are those charges still pending down there.

THE DEFENDANT: Yes, sir.

THE COURT: Well, I have to say this on the record. I am absolutely dumbfounded—absolutely shocked that the State of Iowa would recommend probation in this case. That just—It just baffles me.

This isn't a case of giving you a break, Mr. Fridolfson. You've been given break after break after break. You're going to kill somebody else and I'm not going to allow that to happen.

The sentence of the Court is going to be the Defendant is to be placed in incarceration for an indeterminate term not to exceed 15 years. . . .

Although pending charges were briefly mentioned, there is no question the district court based the imposition of a prison term on Fridolfson's history of OWI convictions and an OWI-related death.

We conclude the district court did not consider impermissible factors in sentencing Fridolfson. Accordingly, we affirm his judgment and sentence.

**AFFIRMED.**