IN THE COURT OF APPEALS OF IOWA

No. 1-163 / 10-1262
Filed March 30, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SEAN MICHAEL LATCHAM,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Deborah Farmer Minot, District Associate Judge.

Sean Michael Latcham appeals from his sentence following his guilty plea and conviction for harassment in the first degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Bradley M. Bender, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Janet M. Lyness, County Attorney, and Anne Lahey, Assistant County Attorney, for appellee.

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

DANILSON, J.

Sean Latcham appeals from his sentence following his guilty plea and conviction for harassment in the first degree, in violation of Iowa Code section 708.7(2) (2009).[1] He contends the district court based its sentencing decision solely on the nature of the offense. Upon our review, we find the record reflects the court's consideration of the nature of the offense, as well as other essential factors, in reaching its discretionary sentence. We further find the district court did not abuse its discretion, as the sentence was not based on reasons that were untenable. We therefore affirm the sentencing order of the district court.

I. Background Facts and Proceedings.

Latcham was involved in a prior relationship with Linda Maher, and they are the parents of a minor child, M.L. In July 2009, an order of protection was issued providing that Latcham have no contact with Maher. On December 5, 2009, M.L. was admitted to the University of Iowa Hospitals for respiratory issues. Pursuant to the terms of the protection order, Latcham was allowed to visit M.L. in the hospital for three hours without Maher being present. Prior to his arrival, Latcham called Maher approximately twelve times about her current boyfriend. Latcham visited M.L. alone for three hours and then left the hospital without incident.

About ten minutes later, Latcham called Maher and told her that if he saw her and her boyfriend outside the hospital, he would run them over with his truck. He called approximately fifteen more times. In the final call, Latcham told Maher,

[1] Latcham was also convicted and sentenced for violation of a no-contact order, in violation of section 664A.7(5). Latcham does not appeal the court's sentencing order on that charge.

"I'm on my way back there, I've got a gun with me, I'm gonna bust in there and shoot him and you. I don't care if I go to jail, I'll go down for that." Maher notified hospital staff, and the pediatric intensive care unit was placed on lock down. The Iowa City Police Department was unable to locate Latcham in Iowa City that day, but officers contacted him by telephone the following day. Latcham admitted to having contact with Maher and threatening Maher's boyfriend, indicated he was sorry, and explained it was "simply a conversation over the phone that went the wrong direction."

Latcham was charged by trial information with harassment in the first degree, and violation of a no-contact order. He pled guilty to the charges, and the court accepted his pleas. At the sentencing hearing, the court stated it had reviewed "all the contents of the file," as well as the protective order entered in July 2009, and the minutes of testimony. The court heard testimony at the hearing regarding Latcham's employment, counseling, rehabilitation, involvement with his church and family, prior criminal history, and his relationship with Maher and his son.[2] After Latcham exercised his right of allocution, the court reflected, "Well I do appreciate the regret and remorse that you expressed to me today."

The court also noted that it understood "the stresses that a sick child can put on parents," but that Latcham's behavior was "horrific" and went beyond just affecting Maher and his son to impact everyone in the hospital that day. The court further stated that "stress and upset is not really an acceptable way" to explain Latcham's behaviors.

[2] Such information is also included in the record.

The court sentenced Latcham to 180 days in jail with credit for time served on the harassment charge. The no-contact order with Maher was extended for five years. The court stated:

> The reasons for the sentence are primarily the nature and circumstances of the offense. The Court finds that Mr. Latcham was a specific danger to the victim in this case as well as to the University of Iowa Hospitals and Clinics and to the community at large. The Court makes a finding that this sentence provides him with maximum opportunity for rehabilitation as well as providing for community safety in this matter. . . . I do note there's a prior failure to appear, so I'm not going to delay mittimus in this case.

The court reiterated this reasoning in its written sentencing order. Latcham now appeals.

II. Scope and Standard of Review.

Our review of sentencing decisions is for correction of errors at law. Iowa R. App. P. 6.907. Sentencing decisions of the district court are cloaked with a strong presumption in their favor. *State v. Grandberry,* 619 N.W.2d 399, 401 (Iowa 2000). Our task on appeal is not to second guess the decision made by the district court, but to determine if it was unreasonable or based on untenable grounds. *State v. Formaro*, 638 N.W.2d 720, 725 (Iowa 2002). A sentence will not be upset on appeal unless the defendant demonstrates there is no support for the decision in the evidence. *State v. Valin*, 724 N.W.2d 440, 445 (Iowa 2006).

III. Discussion.

Latcham argues the district court abused its discretion by relying on solely one factor (the circumstances of the offense) in sentencing him. The State counters that although the district court "discussed the circumstances of the

offense most extensively," the court "was aware of the pertinent factors for sentencing such as, age, employment, family, prior criminal history, and circumstances of the offense," and that the court "indicated it considered all those factors, as well as the community's interest" in reaching its decision. The court was also aware that Latcham was remorseful for his actions.

When a sentence is not mandatory, the district court must exercise its discretion in determining what sentence to impose. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). The court demonstrates a proper exercise of discretion by stating upon the record the reasons for the particular sentence imposed. *Id*.; *See* Iowa R. Crim. P. 2.23(3)(*d*). "A statement may be sufficient, even if terse and succinct, so long as the brevity of the court's statement does not prevent review of the exercise of the trial court's sentencing discretion." *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989).

> In applying discretion, the court should weigh and consider all pertinent matters in determining proper sentence, including the nature of the offense, the attending circumstances, defendant's age, character and propensities and chances of his reform. The courts owe a duty to the public as much as to defendant in determining a proper sentence. The punishment should fit both the crime and the individual.

State v. August, 589 N.W.2d 740, 744 (Iowa 1999).

"The nature of the offense alone cannot be determinative of a discretionary sentence." *State v. Dvorsky*, 322 N.W.2d 62, 67 (Iowa 1982). However, the district court enjoys the latitude to place greater importance on one sentencing consideration over others. *State v. Wright*, 340 N.W.2d 590, 593 (Iowa 1983). "The application of these goals and factors to an individual case, of course, will not always lead to the same sentence." *Valin*, 724 N.W.2d at 445. In

determining whether the district court considered pertinent matters in imposing a particular sentence, we look to all parts of the record to find supporting reasons. *State v. Jason*, 779 N.W.2d 66, 76 (Iowa Ct. App. 2009).

Based on our review of the entire record, including the transcript of the sentencing hearing, we conclude the sentencing court relied upon, and provided, adequate reasons for the sentence imposed. The court stated that it had reviewed "all the contents of the file," which included information regarding Latcham's age, rehabilitation, family relationships, employment, as well as the nature and circumstances of the offense. We acknowledge that the court expressed its concern regarding the nature of the offense in making its sentencing determination, and stated, "[t]he reasons for the sentence are primarily the nature and circumstances of the offense." However, the court also stated that "this sentence provides [Latcham] with maximum opportunity for rehabilitation as well as providing for community safety in this matter." In its written sentencing order, the court reiterated, "[this Court believes] that this sentence will provide the defendant the maximum opportunity for rehabilitation as wells as providing for community safety."

Here, although it is clear the court placed greater importance on one sentencing consideration over others, *Wright*, 340 N.W.2d at 593, it also apparent that the "nature of the offense alone" was not the single factor determinative of the court's discretionary sentence. *Dvorsky*, 322 N.W.2d at 67. Upon our review, we find the record reflects the court's consideration of other "minimal essential factors," *State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979), including Latcham's character, remorsefulness, rehabilitation, and chance

for reform, as well as the protection of the community from further offenses. *Formaro*, 638 N.W.2d at 725. Under these facts, we conclude the sentence was not based on untenable reasons, and therefore, the court did not abuse its discretion in reaching its decision.

AFFIRMED.