

**IN THE COURT OF APPEALS OF IOWA**

No. 1-257 / 10-0470  
Filed May 11, 2011

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

**vs.**

**BRIAN SCOTT DROEGMILLER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Plymouth County, Jeffrey A. Neary (plea hearing) and James D. Scott (sentencing), Judges.

Brian Droegmiller appeals from his sentence following his plea of guilty to theft in the first degree. **AFFIRMED.**

Brian Vakulskas of Vakulskas Law Firm, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Linda Hines, Assistant Attorney General, and Darin J. Raymond, County Attorney, for appellee.

Considered by Sackett, C.J., and Doyle and Danilson, JJ. Tabor, J., takes no part.

**DANILSON, J.**

Brian Droegmiller appeals from his sentence imposed following his guilty plea to theft in the first degree in violation of Iowa Code sections 714.1 and 714.2(1) (2009). Droegmiller contends the district court abused its discretion in failing to suspend his sentence of incarceration. Because we find the court properly considered relevant sentencing factors and did not abuse its discretion in imposing Droegmiller's sentence, we affirm.

On February 16, 2010, Droegmiller pled guilty to theft in the first degree for his act of stealing in excess of \$130,000 from a joint business account he held with father and son, Randy and Shaun Niehus, following an agreement to purchase and sell cattle. Droegmiller agreed to plead guilty to the theft charge and pay \$67,331 in restitution to Randy Niehus and \$67,253 in restitution to Shaun Niehus, in return for the State's agreement to dismiss the additional charge of ongoing criminal conduct pending against Droegmiller. The district court accepted Droegmiller's guilty plea. The sentencing court rejected Droegmiller's request for probation and sentenced him to a term of incarceration not to exceed ten years and fined him \$1000.

Our review of a sentence imposed in by the district court is for correction of errors at law. Iowa R. App. P. 6.907; *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). However, the decision of the district court to impose a particular sentence within the statutory limits is cloaked with a strong presumption in its favor and will only be overturned for an abuse of discretion or the consideration of improper matters. *Formaro*, 638 N.W.2d at 724. In weighing and considering all pertinent matters in determining the proper sentence, the court should

consider “the societal goals of sentencing criminal offenders, which focus on rehabilitation of the offender and the protection of the community from further offenses.” *Id.*; see also *State v. Laffey*, 600 N.W.2d 57, 62 (Iowa 1999). The court should further consider “the nature of the offense, the attending circumstances, the age, character and propensity of the offender, and the chances of reform.” *Formaro*, 638 N.W.2d at 724.

At the sentencing hearing on March 15, 2010, the court reviewed the presentence investigation report and received statements of counsel, Droegmiller, and victim Randy Niehus. Defense counsel recommended, as did the presentence investigation report, a term of probation to enable Droegmiller to make some sort of restitution payments to the victims. Droegmiller contends the court abused its discretion by only considering one factor—his ability to pay restitution.

The record reflects the victim and the prosecutor recommended prison if Droegmiller was only able to pay \$500 a month toward his restitution obligation. Although the district court expressed concern about the amount of restitution, the court made no reference to Droegmiller’s ability to pay a certain sum each month towards restitution. Further, it is clear the court also considered Droegmiller’s health, employment, remorse, criminal record, responsibility for his actions, rehabilitation, and the effect of Droegmiller’s actions on the victims and the community. As the court stated:

The issue, of course, before the Court is whether or not this prison term should be suspended and the defendant placed on probation. There are some factors towards mitigation that would indicate that it should be suspended and Defendant placed on probation.

First, the presentence investigator recommended probation. Secondly, you don't earn money in prison, very little. And there's a substantial amount of restitution that needs to be paid here. And in a theft case like this, I think for justice to be done not only does the Court need to look at the defendant but needs to look at the victim and what—what will it take.

There are factors on the other side of the equation, however, as well. Factors against probation and towards prison. First and foremost, is the gravity of the offense, the magnitude of this. This is not any small item. \$130,000 or \$125,000 is a significant amount of money. It's two or three times the annual income of most people in this area. And it's a factor I need to consider seriously.

Secondly, is what's it going to take to rehabilitate the defendant and adequately protect the community? The Court's not convinced that the defendant has really accepted responsibility. What I heard the defendant say was that he only pled guilty because of a health problem, disagrees with the restitution figure, and I heard no remorse at all.

I'm looking at the record, and this is not the first theft charge for the defendant. True, it is the most serious one, but going back to 1989 and '90 there's theft and criminal mischief charges, operating while intoxicated second offense, driving while revoked, crimes of both dishonesty, theft and irresponsibility.

When I weigh all these factors together, the Court does not believe that the defendant will be rehabilitated and the community protected through strict—purely probation. I conclude that the prison term should not be suspended but imposed.

Upon our review, we find the district court's decision was within statutory limits, and was neither unreasonable nor based on insufficient or untenable grounds. The court considered and weighed multiple appropriate factors in arriving at a sentence that appear to provide for Droegmiller's rehabilitation as well as the protection of the community. See Iowa Code § 901.5. The court's sentencing decision was well within its discretion, and we will not disturb it on appeal. Accordingly, we affirm.

**AFFIRMED.**