IN THE COURT OF APPEALS OF IOWA

No. 1-270 / 10-1296
Filed May 11, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MARK ALLEN CRAWFORD,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Joel E. Novak, Judge.

Mark Allen Crawford appeals his sentence following his plea of guilty to one count of third-degree sexual abuse. **AFFIRMED.**

John C. Heinicke of Kragnes & Associates, P.C., Des Moines, for appellant.

Mark Allen Crawford, Des Moines, pro se.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, John P. Sarcone, County Attorney, and Michael T. Hunter, Assistant County Attorney, for appellee.

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

DOYLE, J.

Originally charged with two counts of third-degree sexual abuse, Mark Allen Crawford pled guilty to one count of third-degree sexual abuse in violation of Iowa Code section 709.4(2)(c)(4) (2009). A presentence investigation (PSI) was ordered. At sentencing, the court rejected Crawford's request for probation and sentenced him to prison for a period not to exceed ten years. On appeal, Crawford contends the district court abused its discretion by imposing a term of incarceration and the State breached the plea agreement. We affirm.

Our review of sentencing decisions is for correction of errors at law. Iowa R. App. P. 6.907; *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). A sentence will not be upset on appeal unless the defendant demonstrates an abuse of district court discretion or a defect in the sentencing procedure. *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000).

> Sentencing decisions of the district court are cloaked with a strong presumption in their favor. Where, as here, a defendant does not assert that the imposed sentence is outside the statutory limits, the sentence will be set aside only for an abuse of discretion. An abuse of discretion is found only when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable.

Thomas, 547 N.W.2d at 225 (internal citations omitted). "When a sentence is not mandatory, the district court must exercise its discretion in determining what sentence to impose." *Id*. Iowa Rule of Criminal Procedure 2.23(3)(*d*) requires a sentencing court to demonstrate its exercise of discretion by stating "on the record its reason for selecting the particular sentence." "The sentencing court, however, is generally not required to give its reasons for rejecting particular sentencing options." *Thomas*, 547 N.W.2d at 225. In considering sentencing

options, the court is to determine, in its discretion, which of the authorized sentences will provide both the maximum opportunity for the rehabilitation of the defendant and for the protection of the community from further offenses by the defendant and others. Iowa Code § 901.5; *see also State v. Hildebrand*, 280 N.W.2d 393, 395 (Iowa 1979).

Reiterating the same arguments he made to the district court in requesting a suspended sentence with probation, Crawford asserts the court abused its discretion in imposing a prison term. He suggests no impropriety on the part of the district court. Crawford acknowledges that he has a prior "minimal" criminal history, but argues the district court "failed to adequately consider Crawford's rehabilitative nature and focused too much attention on protecting the community by choosing a prison sentence."

The PSI reveals Crawford was screened on two sex offender risk assessments: one scored him in the low moderate category of risk for sexual recidivism, and the other scored him in the medium level of sexual re-offending. Crawford reported he felt he could benefit from participating in the sex offender treatment program. The preparer of the PSI recommended Crawford be granted a suspended prison sentence and placed on probation.

In setting forth reasons for the sentence imposed, the district court stated:

> [Crawford] still has an assault in 2005, and he still has providing alcohol to a minor.
>
> Now, I agree, neither of those are capital offenses. However, they are criminal offenses. So this is, basically, the third time he has been involved in criminal activity, and he is only [twenty-three] years old. And he graduated from really minor criminal action to the big time when he had sex—commits a sex act with a [fourteen]-year-old girl.

> So I hear what you say. I read what the PSI interviewer said. And, obviously, the court is not bound by the PSI recommendation.
>
> So thank you for your input. And you argued strenuously for your client here, and you did in chambers. And I appreciate your argument, but it is not enough to convince the court to change this court's mind.
>
> The record shows he pled guilty on June 10th, 2010, to sexual abuse in the third degree, a violation of [Iowa Code section] 709.4(2)(c)(4).
>
> . . . .
>
> It is the judgment of the court that the defendant is adjudged guilty of the crime of sexual abuse in the third degree in violation of section 709.4(2)(c)(4), and he shall be in prison for a period not to exceed ten years as provided by Iowa Code sections 902.9 and 902.3
>
> . . . .
>
> Granting probation in this matter is denied because probation would not provide reasonable protection of the public and maximum opportunity for rehabilitation of the defendant.

We hold that the district court did not abuse its discretion in ordering incarceration of Crawford as an appropriate sentencing option, nor did it consider any improper matters. The sentence imposed was within the parameters set by our legislature, and the circumstances of this case do not compel deviation from permitted options.

Additionally, Crawford contends the district court abused its discretion when it failed to follow the PSI recommendation that he be granted a suspended prison sentence and placed on formal probation. He asserts the PSI recommendation is binding on the court. He cites no authority supporting this assertion. Failure to cite authority may be deemed a waiver of an issue. Iowa R. App. P. 6.903(2)(*g*)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue."). Pro se or not, parties to an appeal are expected to follow applicable rules. It has long been the rule that procedural rules apply

equally to parties who are represented by counsel and to those who are not. Pro se parties receive no preferential treatment. *See Hays v. Hays*, 612 N.W.2d 817, 819 (Iowa Ct. App. 2000).

> The law does not judge by two standards, one for lawyers and the other for lay persons. Rather, all are expected to act with equal competence. If lay persons choose to proceed pro se, they do so at their own risk.

Metropolitan Jacobson Dev. Venture v. Bd. of Review, 476 N.W.2d 726, 729 (Iowa Ct. App. 1991). Although this may seem harsh to a pro se litigant, it is justified by the notion that appellate judges must not be cast in the role of advocates for a party who fails to comply with court rules and inadequately presents an appeal. *See State v. Piper*, 663 N.W.2d 894, 913-14 (Iowa 2003), *overruled on other grounds by State v. Hanes*, 790 N.W.2d 545, 551 (Iowa 2010). In any event, contrary to Crawford's assertion, Iowa Code section 901.5 does not mandate that a sentencing court adopt the recommendations contained in the PSI. *See State v. Taylor*, 490 N.W.2d 536, 539 (Iowa 1992) ("While the [PSI] recommended probation, we have held that it is not an abuse of discretion to refuse to grant probation even in the face of such recommendations.").

Crawford also contends we should be guided by *Pepper v. U.S.*, ___ U.S. ___, 131 S. Ct. 1229, ___ L. Ed. 2d ___ (2011). Since the *Pepper* opinion had not been issued prior to the preparation of his pro se brief, he asked that his appeal be held in abeyance pending issuance of the *Pepper* opinion. Coincidentally, *Pepper* was issued the same day Crawford filed his brief. *Pepper* holds that a district court at resentencing may consider evidence of defendant's post-sentencing rehabilitation, and such evidence may, in appropriate cases,

support a downward variance from the now-advisory Federal Sentencing Guidelines range. *Id*. at ___, 131 S. Ct. at 1236, ___ L. Ed. 2d at ___. *Pepper* is not applicable to any issue in Crawford's appeal as Pepper deals with post-sentencing rehabilitation and a variance from the Federal Sentencing Guidelines, neither of which is applicable here. *See id*.

Crawford also argues the State breached the plea agreement. He asserts: "The State did not follow through with its concession to allow Crawford to have probation, and did not support the [PSI] recommendation of probation and suspended prison term." At the guilty plea hearing the prosecutor stated:

> And it's my understanding if the court accepts [Crawford's] plea, we would request that a [PSI] be ordered and at the time of sentencing each side would be free to argue for whatever sentence they felt was appropriate.

Crawford's attorney confirmed to the court: "That is an accurate statement of the plea negotiations in this matter, your honor." The court then advised Crawford of the potential of a ten-year sentence and further stated:

> The sentence can be imposed and you'd have to go to prison, or it can be suspended and you could be placed on probation. . . . The court will consider all of the options available at sentencing, after reviewing a presentence investigation.

Crawford acknowledged he understood. No reasonable reading of the guilty plea hearing transcript could be interpreted to even suggest the State either recommended probation or promised to support a recommendation of probation. The State requested a PSI be ordered. After that, the parties were "free to argue for whatever sentence they felt was appropriate." Crawford knew full well he faced the possibility of imprisonment when he pled guilty. We find no breach of the plea agreement.

For all the above reasons, we affirm the sentence imposed by the district court.

AFFIRMED.