

IN THE COURT OF APPEALS OF IOWA

No. 1-438 / 10-2013
Filed June 15, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

FERLIN PATRICK EDGINGTON,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, Mark E. Kruse, District Associate Judge.

Defendant appeals from the sentence imposed following a guilty plea.

SENTENCE PARTIALLY VACATED.

Mark C. Smith, State Appellate Defender, and Martha J. Lucey, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Tyron Rogers, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

EISENHAUER, P.J.

Ferlin P. Edgington was convicted, after pleading guilty, of harassment in the second degree. He was sentenced to thirty days in jail, all but two days suspended, and placed on probation for twenty-four months. Edgington was also fined \$315 plus a \$110.25 surcharge, ordered to pay \$180 attorney fees, and ordered to successfully complete “the Batterers’ Education Program through the Eighth Judicial Department of Corrections.” A no-contact order was entered prohibiting him from any contact with the victims of his harassment. Edgington’s crime arose out of road rage incidents. Edgington and the victims were strangers to each other.

On appeal, Edgington argues the court was without authority to require him to complete the batterers’ program as part of his sentence. Alternatively, if the requirement is found to be a condition of his probation, Edgington argues this condition is unreasonable.

“Our review of the sentence imposed in a criminal case is for correction of errors at law.” *State v. Mott*, 731 N.W.2d 392, 394 (Iowa 2007). “If the trial court’s sentence is not authorized by statute, it is void.” *State v. Kapell*, 510 N.W.2d 878, 879 (Iowa 1994). We, therefore, examine the sentence imposed by the district court to determine whether it complies with the relevant statutes. See *id.*

A sentence imposed in accordance with applicable statutes will be overturned only for an abuse of discretion or a defect in the sentencing procedure, such as consideration of impermissible factors. *State v. Wright*, 340 N.W.2d 590, 592 (Iowa 1983). “The relevant inquiry is whether the record before

the sentencing court contains a reasonable basis for imposing the term in question.” *State v. Manser*, 626 N.W.2d 872, 874 (Iowa Ct. App. 2001).

It is unclear whether Edgington’s completion of the batterers’ program is a term of his sentence or a requirement of his probation. The court did not mention the batterers’ program during the sentencing hearing, but included it in the judgment entry. The batterers’ program requirement is one of numerous paragraphs following the heading: “PROBATION OR OTHER SENTENCING ORDERS.”

Therefore, we first analyze the batterers’ program as a term of Edgington’s sentence. We recognize our statutes require participation in a batterers’ treatment program in connection with a conviction for domestic abuse assault. See Iowa Code §§ 708.2A(9), 708.2B (2009). Additionally, while “this type of treatment program was initially developed for domestic abuse offenders, nothing . . . limits its application to this group of defendants . . . so long as its imposition [is] otherwise authorized by statute.” *Manser*, 626 N.W.2d at 874 (emphasis added).

Edgington was sentenced for the crime of harassment in the second degree, a serious misdemeanor in violation of Iowa Code sections 708.7(1) and 708.7(3). Because Chapter 708 does not define any specific sentence for this offense, the district court must be guided by general sentencing provisions. See Iowa Code chapter 708; *Manser*, 626 N.W.2d at 875.

Under chapter 903, entitled misdemeanors, the maximum sentence that can be imposed for a serious misdemeanor offense is a fine of at least \$250, but not exceeding \$1875. Iowa Code § 903.1(b). “In addition, the court may also

order imprisonment not to exceed one year.” *Id.* Further sentencing options are found in section 901.5, which governs the court’s authority to grant a deferred judgment, suspend a sentence, impose fines and terms of incarceration, place a defendant on probation, order completion of substance abuse treatment, order revocation of operating privileges by the department of transportation, reconsider an imposed sentence, and deny certain benefits. *Id.* § 901.5.

Neither these statutes, nor the other general-application sentencing provisions, authorize imposition of a batterers’ education or treatment program as a term of Edgington’s sentence for second-degree harassment.¹ *Cf.* Iowa Code §§ 901.4A, 901.5(8) (authorizing an order for a substance abuse evaluation and completion of treatment). Because the Iowa Code does not contain a provision authorizing the imposition of a batterers’ treatment program under the facts in this case, if the batterers’ treatment program was a term of Edgington’s sentencing, that term was outside of the statutory limits and void. *See Manser*, 626 N.W.2d at 874.

Second, the more intriguing question and analysis is whether the court could require completion of the batterers’ program as a condition of Edgington’s probation. A sentencing court may impose any reasonable probation condition in order to promote rehabilitation or community protection. Iowa Code § 907.6. In *Manser* we concluded completion of a batterers’ program may be a reasonable condition of probation for the crime of assault with injury where the assault was committed “upon an intimate, and perhaps domestic partner.” *Manser*, 626

¹ *See, e.g.*, Iowa Code § 910.2 (governing restitution and community service); Iowa Code §§ 911.1-2 (governing surcharges); Iowa Code § 915.100(2)(a) (governing victim restitution).

N.W.2d at 875. Here the victims and Edgington were strangers. We hold completion of the batterers' treatment program under these circumstances does nothing to promote rehabilitation or community protection and is not a "reasonable condition." See Iowa Code § 907.6.

Accordingly, we vacate the condition of Edgington's sentence/probation requiring completion of the batterers' treatment program.

SENTENCE PARTIALLY VACATED.