

IN THE COURT OF APPEALS OF IOWA

No. 15-0688
Filed October 12, 2016

STATE OF IOWA,
Plaintiff-Appellee,

vs.

GAGE SKYLAR JURSKI,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Thomas G. Reidel,
Judge.

A defendant appeals his sentence. **AFFIRMED.**

Courtney T. Wilson of Gomez May LLP, Davenport, for appellant.

Thomas J. Miller, Attorney General, and Kelli A. Huser, Assistant Attorney
General, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and McDonald, JJ.

VOGEL, Presiding Judge.

Gage Jurski appeals his sentence following his guilty plea to stalking in violation of a protective order, in violation of Iowa Code section 708.11(3)(b) (2013). Jurski claims the district court abused its discretion by considering charges that were pending against him in determining the appropriate sentence.

Following his guilty plea, Jurski was sentenced to a maximum of five years imprisonment. At sentencing, the district court noted Jurski's criminal history, employment history, the seriousness of the crime to which Jurski pled guilty, Jurski's potential for rehabilitation, and community safety concerns in determining imprisonment was appropriate. The district court also stated: "I've not given any consideration to any entries in the criminal history section of that report that do not show an admission or adjudication of guilt." When the State mentioned Jurski's pending charges, the district court responded: "Well, I don't think I can consider the pending."

When a sentence falls within statutory limits, the sentence is reviewed for abuse of discretion. *State v. Seats*, 865 N.W.2d 545, 552 (Iowa 2015). "A district court may not consider an unproven or unprosecuted offense when sentencing a defendant unless (1) the facts before the court show the defendant committed the offense, or (2) the defendant admits it." *State v. Jose*, 636 N.W.2d 38, 41 (Iowa 2001). The record reflects the district court did not consider the unproven, pending charges against Jurski. The district court stated it did not consider the charges and rebuffed the State's mention of the charges. We see no basis in the record to doubt the district court's explicit statement. Accordingly, we conclude the district court did not abuse its discretion in sentencing Jurski.

Therefore, we affirm Jurski's sentence.

AFFIRMED.