

IN THE COURT OF APPEALS OF IOWA

No. 16-1214
Filed January 11, 2017

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOSHUA STEPHEN BENES,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, John D. Telleen,
Judge.

Joshua Benes appeals his sentence following his guilty plea to delivery of
methamphetamine as a habitual offender. **SENTENCE VACATED IN PART;
REMANDED FOR RESENTENCING.**

Les M. Blair III of Blair & Fitzsimmons, P.C., Dubuque, for appellant.

Thomas J. Miller, Attorney General, and Louis S. Sloven, Assistant
Attorney General, for appellee.

Considered by Vogel, P.J., and Tabor and Mullins, JJ.

MULLINS, Judge.

Joshua Benes appeals his sentence following his guilty plea to delivery of five grams or less of methamphetamine pursuant to a plea agreement. He was sentenced on July 15, 2016, to a fifteen-year term of incarceration as a habitual offender, with a five-year minimum before parole eligibility. He also pled guilty to assault resulting in bodily injury and was sentenced to one year in jail, to run concurrent to the prison sentence. These sentences were ordered to run concurrent to a pending parole violation proceeding. Benes appeals, arguing the district court abused its discretion by not suspending the sentences and placing him on probation where he could benefit from treatment and supervision and erred in failing to consider the provisions of Iowa Code sections 124.413(1) and (3) and 901.11(1), as amended effective July 1, 2016. 2016 Iowa Acts ch. 1104, §§ 1, 2, 6.

“We review sentencing decisions for abuse of discretion or defect in the sentencing procedure.” *State v. Hopkins*, 860 N.W.2d 550, 553 (Iowa 2015). “An abuse of discretion will only be found when a court acts on grounds clearly untenable or to an extent clearly unreasonable.” *Id.* (quoting *State v. Leckington*, 713 N.W.2d 208, 216 (Iowa 2006)). “We give sentencing decisions by a trial court a strong presumption in their favor.” *Id.*

Given Benes’s lengthy criminal history, multiple failures to respond favorably to treatment and supervision, including parole supervision at the time he committed the current offenses, and other record made by the district court at the time of sentencing, we find no abuse of discretion in the court’s decision to incarcerate Benes and deny him probation. See Iowa Ct. R. 21.26(a), (d).

The State agrees with Benes that the district court erred in failing to consider the amendments to Iowa Code sections 124.413 and 901.11, which were effective July 1, 2016. Accordingly, we vacate the sentencing order as to the mandatory minimum and remand for resentencing.

SENTENCE VACATED IN PART; REMANDED FOR RESENTENCING.