

IN THE COURT OF APPEALS OF IOWA

No. 1-699 / 10-1845
Filed November 23, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TRAYCE GENE REDD,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James D. Coil,
District Associate Judge.

Trayce Gene Redd appeals from his conviction of driving while barred.

AFFIRMED AND CASE REMANDED.

Mark C. Smith, State Appellate Defender, and Dennis D. Hendrickson,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant
Attorney General, Thomas J. Ferguson, County Attorney, and Dustin L. Lies,
Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

TABOR, J.

Trayce Gene Redd challenges the sentencing court's order that, as a condition of receiving probation for his driving-while-barred conviction, he set up a plan to pay his outstanding fines and court costs from prior traffic violations. Because Redd's current offense can be traced to the non-payment of his prior obligations, the court did not abuse its discretion in ordering a wage assignment as a term of his probation. But we do conclude that the court erred in delegating its discretion to the county attorney's office to determine Redd's installment payments. We affirm the sentencing order, but remand the case for the district court to determine the reasonableness of the payment plan.

I. Background Facts and Proceedings.

Waterloo police stopped Redd for a traffic violation in the early morning hours of July 2, 2009. Redd did not have a valid driver's license, having been barred since 2007. On August 12, 2009, the Black Hawk County Attorney charged Redd with driving while barred, in violation of Iowa Code sections 321.560 and 321.561 (2009).

A jury found Redd guilty on August 11, 2010. Redd appeared for sentencing on November 1, 2010. The State recommended a two-year prison term due to Redd's lengthy criminal history and poor driving record. The defense asked for probation, asserting that Redd was employed and had "changed [his] whole life around."

Before sentencing Redd, the court asked him whether he had a wage assignment in place for payment of his back fines. The defendant responded

that he was not having money taken out of his wages: “I never know where to pay, how much I owe. I don’t even know what I owe. I can make payment plans.”

The court sentenced Redd to 365 days in jail with all but sixty days suspended. The court placed him on probation for two years and suspended his fine of \$625, saying, “I know you’ve got a balance, probably a very large balance on all of your other fines and so forth.” The court ordered Redd to pay his current court costs and surcharges.

With regard to Redd’s probation, the court stated:

With regard to the portion of the sentence which is suspended, I’m going to place you under supervised probation for a period of 24 months to the Department of Correctional Services under the department’s probation continuum. As specific terms and conditions of your probation, you will be required to reimburse the State of Iowa for your court-appointed attorney’s fees and for the court costs in this case and the other costs and fees.

. . . .
If you are indeed employed . . . as you say, then you are to assign a portion of your wages to payment of all your back fines, and the county attorney’s office collections division will know exactly how much you owe. And I’m going to order that you set up a wage assignment through the Black Hawk County Attorney’s Office for payment of any back fines and court debt that you do owe.

That will be a term and condition of your probation that you do that. So if you don’t do that, you’re in violation of your probation. You’ll do the balance of 365 days in jail. Now, if you lose your job . . . you’re going to do the balance of whatever sentence, whatever days of the 60 days that’s suspended, you’re going to do that in Black Hawk County Jail. Do you understand that?

Redd responded affirmatively.

At the close of the sentencing hearing, Redd asked the court how much he would have to pay per week or month. The court responded: “They’ll work that out down in the county attorney’s [office].”

Redd filed a timely notice of appeal.

II. Scope and Standard of Review.

Iowa's appellate courts employ two different standards of review when a defendant appeals from his sentence. *State v. Valin*, 724 N.W.2d 440, 444 (Iowa 2006). "Depending upon the nature of the challenge, the standard of review is for the correction of errors at law or for an abuse of discretion." *Id.* In this case Redd is challenging the reasonableness of a term of probation. We review that challenge for an abuse of discretion. *Id.* at 444-45. An abuse of discretion occurs where there is no support for the decision in the evidence. *Id.* at 445.

In determining whether an abuse of discretion exists, we consider the goals of sentencing (rehabilitation of the offender and protection of the community); the nature of the offense; attending circumstances; the offender's age, character, and propensity to commit crimes; and the chances of reform. *Id.* We refrain from second guessing the decision made by the district court, but strive "to determine if it was unreasonable or based on untenable grounds." *Id.*

III. Analysis.

Redd contends the district court erred in requiring him to set up a wage assignment to repay fines and court costs from prior convictions as a condition of his probation in the current driving-while-barred case. He argues there is no causal connection between driving while barred and his outstanding obligations from unrelated criminal cases.

Iowa Code section 907.6 allows the court to impose any reasonable conditions for a defendant's probation that may "promote rehabilitation of the

defendant or protection of the community.” A condition of probation promotes the rehabilitation of the defendant or the protection of the community when it addresses some problem or need identified with the defendant, or some threat posed to the community by the defendant. *Id.* at 446. It is reasonable when the statutory goals of probation are reasonably addressed. *Id.*

While the crime for which the defendant is convicted serves as the circumstance to support the condition of probation, a defendant’s background and history is also relevant when determining probation conditions. *Id.* at 447. A prior conviction can provide the needed history to justify a special condition of probation where it reveals a problem currently suffered by the defendant relating to the need to rehabilitate the defendant or protect the community from the defendant. *Id.*

We agree with the district court’s assessment that a sufficient nexus exists between Redd’s current conviction and the requirement he repay fines and costs still owing from his prior convictions. The conviction on appeal is Redd’s fifth conviction for driving while barred. His license has been suspended twelve times and barred three times. Redd’s driving record reveals the non-payment of previous fines and costs underlies his numerous license suspensions and subsequent barments. Recognizing the need to rehabilitate Redd and to protect society from Redd continuing to drive while barred, the court required him to establish a plan to pay his outstanding obligations as a term of probation. See *State v. Rogers*, 251 N.W.2d 239, 244 (Iowa 1977) (“Probation assumes the offender can be rehabilitated without serving the suspended jail or prison

sentence. But this is not to say probation is meant to be painless.”). This term was reasonable and supported by the evidence.

Because the court acted within its discretion to condition Redd’s probation on the payment of costs and fees on his prior convictions, we affirm that aspect of Redd’s sentence. We nevertheless remand this case for the district court to determine the reasonableness of the payment plan proposed by the county attorney’s office. When an appellate court finds a condition of probation to be ambiguous, the proper remedy is to remand for clarification. See *State v. Hall*, 740 N.W.2d 200, 205 (Iowa Ct. App. 2007)

In *Rogers*, our supreme court discussed the safeguards for administering recoupment of costs as a condition of probation, including the following:

- (1) The requirement of repayment is imposed only on a convicted defendant.
- (2) The court does not order payment of this expense unless the convicted person is or will be able to pay it without undue hardship to himself or dependents, considering the financial resources of the defendant and the nature of the burden payment will impose.
- (3) Revocation of probation shall occur only if defendant willfully fails to make payment, having financial ability to do so.
- (4) Defendant may petition sentencing court to adjust the amount of any installment payments, or the total amount due, to fit a changing financial condition.

Rogers, 251 N.W.2d at 245.

On remand, the district court should exercise its discretion to review Redd’s payment plan to ensure that the *Rogers* criteria are satisfied. Cf. *State v. Harrison*, 351 N.W.2d 526, 529 (Iowa 1984) (discussing plan of restitution under chapter 910). We do not retain jurisdiction.

AFFIRMED AND CASE REMANDED.