

IN THE COURT OF APPEALS OF IOWA

No. 1-871 / 11-0668
Filed December 21, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JEFFREY LYNN BROWN,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, William A. Price,
District Associate Judge.

Defendant appeals the sentence on his conviction for operating while
intoxicated. **SENTENCE VACATED AND REMANDED FOR RESENTENCING.**

Mark C. Smith, State Appellate Defender, and Bradley M. Bender,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant
Attorney General, John Sarcone, County Attorney, and David M. Porter,
Assistant County Attorney, for appellee.

Considered by Danilson, P.J., Tabor, J., and Miller, S.J.*

Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MILLER, S.J.

Jeffrey Brown was charged with operating while intoxicated (OWI), in violation of Iowa Code section 321J.2 (2009). He waived his right to a jury trial and agreed to have the case tried to the court on the minutes of evidence. The court found him guilty of operating while intoxicated, first offense.

The case proceeded to a sentencing hearing on April 25, 2011. The State recommended that Brown be placed in jail for one year, and that the sentence be suspended except for sixty days. Brown requested that all but two weeks or thirty days of his sentence be suspended.

The court sentenced Brown to one year in jail, with all but seventy-five days of that sentence suspended. The court did not give any reasons for the sentence on the record. The sentencing order contained the statement, "The sentence given here is made after considering the protection of the public, the maximum opportunity for rehabilitation of the Defendant, the Defendant's prior record, if any, and the statutorily imposed requirements, if any."

Brown appeals his sentence, claiming the court violated Iowa Rule of Criminal Procedure 2.23(3)(d) by failing to give adequate reasons for the sentence imposed.

I. Standard of Review

We review a sentence in a criminal case for the correction of errors at law. *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). "We will not reverse the decision of the district court absent an abuse of discretion or some defect in the sentencing procedure." *Id.*

II. Merits

Rule 2.23(3)(d) provides, “[t]he court shall state on the record its reason for selecting the particular sentence.” “Although the reasons do not need to be detailed, they must be sufficient to allow appellate review of the discretionary action.” *State v. Evans*, 671 N.W.2d 720, 727 (Iowa 2003) (citation omitted). A court should consider all pertinent matters in determining a proper sentence. *State v. Johnson*, 513 N.W.2d 717, 719 (Iowa 1994). No single factor alone is determinative. *Id.*

A court’s reasons do not need to be made at the sentencing hearing; reasons given in a written judgment entry may be sufficient to permit appellate review of a court’s sentencing decision. *State v. Lumadue*, 622 N.W.2d 302, 304 (Iowa 2001) (citing *State v. Johnson*, 445 N.W.2d 337, 342-43 (Iowa 1989)). Boilerplate in a sentencing order, however, does not meet the requirements of rule 2.23(3)(d). *Id.*; *State v. Jason*, 779 N.W.2d 66, 76 (Iowa Ct. App. 2009).

Here, the court gave the following reasons in the written judgment entry: “[1] the protection of the public, [2] the maximum opportunity for rehabilitation of the Defendant, [3] the Defendant’s prior record, and [4] statutorily imposed requirements, if any.”

As to the first two reasons, the supreme court has noted “the *societal goals* of sentencing criminal offenders, which focus on rehabilitation of the offender and protection of the community from further offenses.” *Formaro*, 638 N.W.2d at 724 (emphasis added). These *goals* were differentiated from “the host of *factors* that weigh in on the often arduous task of sentencing a criminal

offender.” *Id.* at 724-25 (emphasis added). The first two reasons given by the court in this case are actually societal goals that apply to all criminal sentences. Likewise, the reason given by the court referring to statutory requirements applies to all defendants sentenced for OWI. The first, second, and fourth reasons given by the court thus are not factors the supreme court has stated should be considered when sentencing a criminal defendant. See *id.* at 725 (listing factors to be weighed by the court as including “the nature of the offense, the attending circumstances, the age, character[,] and propensity of the offender, and the chances of reform.”).

Furthermore, general statements are insufficient to permit appellate review of the court’s reasoning. *State v. Cooper*, 403 N.W.2d 800, 802 (Iowa Ct. App. 1987). It is insufficient if the court cites “only generalized, vague considerations which we may assume advised every court in making every sentencing decision.” *Id.* In *Cooper*, the court found the district court’s statement that it had considered “the defendant’s prior background” to be such a consideration, and thus an inadequate reason. 403 N.W.2d at 802. The district court’s statement in this case, that it had considered “the Defendant’s prior record, if any,” does not indicate whether Brown has a prior record, or the nature or extent of any such record. It thus provides only the type of generalized, vague consideration found inadequate in *Cooper*, and thus states no adequate reason for the sentence imposed. The court should give a “rationale relating to *this* offense, and *this* defendant’s background.” *Lumadue*, 622 N.W.2d at 305 (emphasis in original).

We conclude the district court's statement of reasons for the sentence imposed does not provide a sufficient basis to review that sentence for an abuse of discretion. When the court fails to state on the record adequate reasons for the sentence imposed, the sentence must be vacated and the case remanded for resentencing. See *Cooper*, 403 N.W.2d at 801-02. As the court did not give sufficient reasons for Brown's sentence as required by rule 2.23(3)(d), the sentence must be vacated and the case remanded for resentencing.

SENTENCE VACATED AND CASE REMANDED FOR RESENTENCING.