IN THE COURT OF APPEALS OF IOWA

No. 1-902 / 11-0665
Filed December 7, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANTWAN SHERRELL HANES,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mary E. Howes, Judge.

Antwan Hanes appeals the sentence imposed following his guilty plea. **AFFIRMED.**

John O. Moeller, Davenport, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Michael J. Walton, County Attorney, and Kelly Cunningham, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

Antwan Hanes appeals his sentence of two concurrent five-year terms of incarceration following his guilty plea to one count of violating the Drug Stamp Act in violation of Iowa Code section 453B.12 (2009) and one count of possession of marijuana with the intent to deliver in violation of section 124.401(1)(d). He contends the district court abused its discretion by imposing a prison term. We affirm.

Our review of sentencing decisions is for correction of errors at law. Iowa R. App. P. 6.907; *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). A sentence will not be upset on appeal unless the defendant demonstrates an abuse of district court discretion or a defect in the sentencing procedure. *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000).

> Sentencing decisions of the district court are cloaked with a strong presumption in their favor. Where, as here, a defendant does not assert that the imposed sentence is outside the statutory limits, the sentence will be set aside only for an abuse of discretion. An abuse of discretion is found only when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable.

Thomas, 547 N.W.2d at 225 (internal citations omitted). "When a sentence is not mandatory, the district court must exercise its discretion in determining what sentence to impose." *Id.* Iowa Rule of Criminal Procedure 2.23(3)(*d*) requires a sentencing court to demonstrate its exercise of discretion by stating "on the record its reason for selecting the particular sentence." Failure to state on the record the reasons for the sentence imposed requires the sentence be vacated and the case remanded for amplification of the record and re-sentencing. *State v. Marti*, 290 N.W.2d 570, 589 (Iowa 1980); *State v. Freeman*, 404 N.W.2d 188,

191 (Iowa Ct. App. 1987). "The sentencing court, however, is generally not required to give its reasons for rejecting particular sentencing options." *Thomas*, 547 N.W.2d at 225. In considering sentencing options, the court is to determine, in its discretion, which of the authorized sentences will provide both the maximum opportunity for the rehabilitation of the defendant and for the protection of the community from further offenses by the defendant and others. Iowa Code § 901.5; *see also State v. Hildebrand*, 280 N.W.2d 393, 395 (Iowa 1979).

Hanes pled guilty to one count of possessing with intent to deliver .069 kilograms of marijuana in violation of section 124.401(1)(d). Possession with intent to deliver fifty kilograms or less of marijuana is a class "D" felony. Iowa Code § 124.401(1)(d). Hanes also pled guilty to one count of failing to affix a drug tax stamp in violation of section 453B.12, a class "D" felony. *Id.* § 453B.12. A class "D" felon is subject to a maximum sentence of five years of confinement. *Id.* § 902.9(5). The sentence imposed, two five-year terms to be served concurrently, was within statutory guidelines.

The gist of Hanes's argument is the sentence was too harsh for the crime of possessing two-and-a-half ounces of marijuana with intent to deliver. He would have preferred probation. He concedes he has a prior history of two delivery offenses, but contends the district court did not consider the passage of time or the change in his circumstances since those offenses.

As a part of the plea agreement, the State recommended concurrent sentencing and agreed, "in spite of [Hanes's] prior criminal history," not to pursue

the habitual offender sentencing enhancement.[1] The State believed incarceration was warranted. The presentence investigation report recommended incarceration. In sentencing Hanes to two five-year concurrent sentences, rather than granting probation, the district court explained its rationale, stating:

> [T]he court has reviewed the presentence investigation report, and certainly, [defense counsel] makes an eloquent plea with a lot of factors . . . on your behalf. And you mentioned, why are your previous offenses being held against you? And I think you have a valid point, that you have been punished for those. However, the reason those are important for sentencing . . . is . . . the court has to look at risk to reoffend. That's an important thing to take into consideration for sentencing, and you have two previous delivery convictions on your record, and this is your third. So, obviously, you have a high risk to reoffend just from your criminal history. We can see that, and that's important to consider, the risk to reoffend, because the court is trying to balance rehabilitation of you, which is important—and one of the functions of the criminal justice system is safety to the community. We try to balance those two things and figure out what is the best thing for your case. The problem is, is that now you're at your third delivery charge. I certainly understand the argument [defense counsel] is making, which is it was marijuana which is considered to be a lesser drug than, say, crack or methamphetamine. Those are much more dangerous drugs. However, any kind of illegal drug is a scourge on society, and it promotes—Marijuana isn't a healthy thing. We all know that, and just because of the fact that it's less dangerous than cocaine, or less dangerous than methamphetamine, doesn't mean that we don't try to rid society of it, because it has bad affects in general on people, which a lot of things do, including alcohol, but it doesn't mean that it's not a serious thing because it's marijuana, and the sentence reflects that, which is you would have a maximum sentence on each count of five years. If you were here for methamphetamine or crack cocaine, it would be [twenty-five] years or [ten] years, depending on the amount that you had, so the State

---

[1] Hanes was charged as a habitual offender under section 902.8. A person sentenced as a habitual offender is not eligible for parole until the person has served the minimum sentence of confinement of three years. Iowa Code § 902.8. "A habitual offender shall be confined for no more than fifteen years." *Id.* § 902.9(3). Pursuant to the plea agreement, Hanes plead guilty to the charges and the State did not pursue the habitual offender enhancement.

> does take that into account when it sets up the sentencing guidelines for sale of illegal drugs.
>
> Despite the fact that I see you're trying to turn yourself around, and what your attorney said, I can't have sympathy for somebody who is back here on their third delivery charge . . . . We tried the shock sentence. It didn't work, because you got an arrest after that. We tried parole, and you got an arrest after that. We tried probation. You discharged, and after successfully discharging that, and having an opportunity to turn yourself around, somehow here we are back again. So, at this point, I'm less interested in the rehabilitation of you, because you don't seem to be able to turn yourself around, for whatever reason, and I'm more concerned about the safety of the community and maybe sending a message that . . . you can't just be here for your third delivery charge and expect to get street probation. Do I think you're the worst person in the world? No, but that's not the issue before me today.
>
> Based on the facts and circumstances contained in the presentence investigation, your previous criminal history, taking all of those into account, I think incarceration is the best alternative at this point, and I think you're getting a favorable plea agreement, because they are recommending concurrent sentences on the two five years, so they would run together, and we know it's an indeterminate term, so like [defense counsel] mentioned, you will discharge and parole much faster than the five years, and the State isn't pursuing the habitual offender, which would mean [fifteen] years tacked on to it, so [defense counsel] has obtained for you an extremely favorable plea agreement, and I think, based on the facts and circumstances of your previous criminal history, and for all the reasons that I've just mentioned, that's what I'm going to sentence you to.

Upon our review, we find the district court's decision was within statutory limits and was neither unreasonable nor based on insufficient or untenable grounds. The court properly considered and weighed numerous appropriate factors in arriving at a sentence, and it clearly state valid reasons for the sentence imposed. The court's sentencing decision was well within its discretion, and we will not disturb it on appeal.

AFFIRMED.