

IN THE COURT OF APPEALS OF IOWA

No. 2-023 / 11-0615
Filed February 1, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RAQUEL MARIE FAIN,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Nathan A. Callahan, District Associate Judge.

Raquel Marie Fain appeals from the judgment and sentence entered following her plea of guilty to possession of a controlled substance. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, Thomas J. Ferguson, County Attorney, Brian Williams, Assistant County Attorney, for appellee.

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

TABOR, J.

Raquel Marie Fain appeals from the judgment and sentence entered following her plea of guilty to possession of heroin. Specifically, she argues the court abused its discretion when it denied her request for a deferred judgment.

Because the evidence shows the court properly exercised its discretion in imposing judgment, but suspending Fain's sentence, we affirm.

I. Background Facts and Proceedings.

On March 28, 2010, Waterloo police officers responded to a call that Fain experienced a possible drug overdose at her residence. Officers found her lying semi-conscious on the floor. In plain view in the kitchen sink, an officer saw a spoon smudged with burned residue he believed to be heroin. He also saw two used syringes and three spoons with burned residue in a partially open drawer. The officers seized the items and later testing revealed the presence of heroin.

On November 5, 2010, Fain entered a written guilty plea to the charge of possession of a controlled substance. The terms of the plea agreement provided the State would recommend a jail sentence of 180 days with all but seven days suspended, the minimum statutory fine of \$315, court costs, attorney fees, surcharges, a substance abuse evaluation, and the revocation of her driver's license for 180 days. Fain was free to offer the court her own sentencing recommendation. Fain sought a deferred judgment.

In its March 29, 2011 sentencing order, the district court sentenced Fain to a 180-day suspended sentence with credit for time served. Fain was placed on probation for a period of twelve to twenty-four months, was fined \$315 and

ordered to pay \$275 in court costs, which could be repaid through community service. Fain was ordered to obtain a substance evaluation and her driver's license was revoked for 180 days.

II. Scope and Standard of Review.

Our review of a district court's sentence is limited to the correction of legal error. *State v. Rodriguez*, 804 N.W.2d 844, 848 (Iowa 2011). When the sentence imposed is within the statutory limits, we review for an abuse of discretion. *State v. Valin*, 724 N.W.2d 440, 444 (Iowa 2006). "An abuse of discretion is found when the court exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable." *State v. Barnes*, 791 N.W.2d 817, 827 (Iowa 2010).

III. Analysis.

When sentencing a defendant, the district court is required to examine "all pertinent information, including the presentence investigation report and victim impact statements" and then determine which authorized sentence "will provide 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 (2009). The sentencing judge is required to state on the record the reasons for a particular sentence. *Barnes*, 791 N.W.2d at 827. The reasons need not be detailed, but the court must provide at least a cursory explanation to allow for appellate review of the discretionary action. *Id.*

Fain contends the district court abused its discretion in denying her request for a deferred judgment. She argues the informal presentence

investigation report indicated she was eligible for a deferred judgment and does not show any prior convictions. She also notes the substance abuse evaluation she had already obtained by the time of sentencing showed that she was successfully participating in substance abuse counseling.

It is not beyond reason for the sentencing court to have considered the mitigating factors cited by Fain, but nevertheless declined to defer judgment in light of the totality of circumstances. The district court acted within its discretion to deny Fain's request for deferred judgment and to impose a suspended sentence. The court based its sentence on the "nature and circumstances of the offense; prior record; rehabilitation goals, and deterrence." The penalty imposed by the district court was not as harsh as the sentence requested by the State, nor as lenient as the one proposed by Fain. We do not find this result to be clearly unreasonable or based upon untenable grounds, but rather a sound exercise of the court's discretion. See *State v. Liddell*, 672 N.W.2d 805, 815 (Iowa 2003) (finding no abuse of discretion where sentence judge did not announce a policy against granting deferred judgments given particular facts). Accordingly, we affirm.

AFFIRMED.