

**IN THE COURT OF APPEALS OF IOWA**

No. 2-105 / 11-1227  
Filed February 29, 2012

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**MAXWELL JAMES GEIST,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Paul L. Macek,  
Judge.

Maxwell Geist appeals his sentence imposed, following a guilty plea, for possession of a controlled substance, third or subsequent offense, and assault resulting in bodily injury. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Michael J. Walton, County Attorney, and Joseph Grubisich, Assistant County Attorney, for appellee.

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

**MULLINS, J.**

Maxwell Geist appeals his sentence imposed, following a guilty plea, for possession of a controlled substance, third or subsequent offense, in violation of Iowa Code section 124.401(5) (2011) and assault resulting in bodily injury in violation of Iowa Code section 708.2(2). He contends the sentencing court impermissibly considered an unprosecuted offense. We affirm.

On March 12, 2011, Geist got into an argument while drinking at a friend's house. During the argument, Geist punched another person causing a cut near the person's left eyebrow. The police were called, and Geist was arrested and found to have marijuana on his person. According to the minutes of testimony, while the arresting officer was transporting Geist to the county jail "[Geist] repeatedly stated that he would kill me. [Geist] stated that he would kill my wife and my kids when he got out. . . . [Geist] stated that he knew where I lived."

Geist was subsequently charged by trial information with possession of a controlled substance, third or subsequent offense, and assault resulting in bodily injury. Geist pled guilty to both charges. During the plea proceeding, the district court asked Geist if he had an opportunity to review the minutes of testimony attached to the trial information, which Geist responded that he had. The district court then questioned, "Are those minutes accurate and complete as they relate to your involvement in these two offenses?" to which Geist responded, "Yes." The court accepted the plea and ordered a presentence investigation (PSI) report to be delivered to the court prior to sentencing.

The completed PSI report included in its “official version” of events a reference to Geist threatening the arresting officer, stating “[Geist] continued to swear and threaten the police officer, stating he would kill him. He also claimed he would kill the officers’ wife and kids when he got out.”

At outset of sentencing, the court asked if Geist had received the PSI report. Geist’s counsel responded, “I have, your Honor, and I’ve gone over it with my client, and we’re not aware of any corrections or changes that are necessary.” The sentencing proceeding continued:

THE COURT: By my count you have been guilty or pled guilty, have been found guilty or pled guilty to 32 separate criminal offenses; 21 of them involved alcohol or substances, illegal substances. In this matter you stated that you would kill the police officer’s wife and kids when you got out of prison.

THE DEFENDANT: I was pretty loaded that day, you know.

THE COURT: Offender Intervention Comments, Needs:

The defendant’s major need is to stop his chemical dependency. However, he has tried several times and at age 50 he has no desire or intention to stop his alcohol use.

While you were intoxicated you formulated a thought and then you announced the thought that you would kill the officer’s wife and kids when you got out. Having no intention or desire to stop drinking suggests that you could be a danger to society. The nature of the offense and the threat involved and the fact that someone was actually hurt suggests that the community needs to be protected from you.

Geist was subsequently sentenced to be incarcerated for a period not to exceed five years on the possession charge, and for a term of incarceration not to exceed one year on the assault charge. Citing Geist’s “lengthy criminal history,” the district court ordered the terms to run consecutively. Geist was also assessed fines, surcharges, court costs, and victim restitution.

Geist now appeals his sentence, claiming the threats made to the arresting officer were unprosecuted offenses the sentencing court impermissibly relied upon in formulating the sentence ordered.

“[W]e will set aside a sentence and remand a case to the district court for resentencing if the sentencing court relied upon charges of an unprosecuted offense that was neither admitted to by the defendant nor otherwise proved.” *State v. Sailer*, 587 N.W.2d 756, 762 (Iowa 1998) (quoting *State v. Black*, 324 N.W.2d 313, 315 (Iowa 1982)). This rule “prohibits a sentencing court from relying on ‘additional, unproven, and unprosecuted charges’ when no facts before the court show the charges are valid and the defendant does not admit the additional charges.” *Id.* (quoting *State v. Messer*, 306 N.W.2d 731, 732-33 (Iowa 1981)). A sentencing court may, however, consider unprosecuted offenses if admitted by the defendant or if adequate facts are presented showing the defendant committed the crimes. *State v. Delaney*, 526 N.W.2d 170, 179 (Iowa Ct. App. 1994).

The threats were clearly set forth in the minutes of testimony and the PSI report. Geist admitted at his plea proceeding that he reviewed the minutes of testimony, and it was accurate and complete. He further admitted at sentencing that he reviewed the PSI report, and he had no corrections or changes. Geist’s admissions were not limited or qualified to the minimum facts necessary to sustain the elements of his charged offenses. His admissions included all the information set forth in those documents. In addition, when confronted by the district court at sentencing about the threat, Geist did not deny making the threat,

and replied only that he “was pretty loaded that day, you know.” Sufficient admitted facts show Geist made the threats. At the sentencing hearing, the court properly considered those facts.

**AFFIRMED.**