

IN THE COURT OF APPEALS OF IOWA

No. 2-110 / 11-1614
Filed March 14, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BENJAMIN CHARLES STROHM,
Defendant-Appellant.

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

Defendant appeals his conviction and sentence for assault with intent to cause serious injury based on his guilty plea. **SENTENCE VACATED AND CASE REMANDED.**

Mark C. Smith, State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant Attorney General, and Alan Ostergren, County Attorney, for appellee.

Considered by Vogel, P.J., Doyle, J., and Mahan, S.J.*

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

MAHAN, S.J.**I. Background Facts & Proceedings.**

Benjamin Strohm was charged with the offense of willful injury, in violation of Iowa Code section 708.4(1) (2011), a class C felony. The State alleged Strohm struck his brother, causing a serious injury.

On September 9, 2011, Strohm and the State entered into a written plea agreement that provided Strohm would plead guilty to assault with intent to inflict serious injury, in violation of section 708.2(1), an aggravated misdemeanor, and all parties would recommend a sentence of 365 days in jail and a fine of \$625. The plea agreement also provided that concurrence by the court was a condition of the plea. The court did not sign the written plea agreement to show concurrence.

On the same day, Strohm signed a written waiver of rights and entered a written guilty plea to assault with intent to cause serious injury. Additionally, Strohm signed a written waiver of his right to file a motion in arrest of judgment and waiver of his right of allocution. The case immediately proceeded to sentencing. The court sentenced Strohm to 365 days in jail and ordered him to pay a fine of \$625. In addition, and outside of the plea agreement, Strohm was placed on probation for twenty-four months, with the conditions that he pay his fine, provide the clerk of court with any address changes, and obey all federal, state, and local laws. Strohm now appeals his guilty plea and sentence.

II. Sentence.

Strohm first claims the court violated Iowa Rule of Criminal Procedure 2.23(3)(d) by not giving any reasons for the particular sentence entered in this

case. Rule 2.23(3)(d) provides, “The 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). 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).

The State concedes the court did not follow the plea agreement and thus exercised some discretion in entering a sentence in this case that imposed the additional requirement of probation for twenty-four months. In this situation, the court is required to set forth its reasons for the particular sentence. See *State v. Oliver*, 588 N.W.2d 412, 414 (Iowa 1998) (noting that where there was no evidence a plea agreement included a provision for the imposition of a sentence, then a statement of reasons was necessary). The State agrees no reasons were given by the court and Strohm’s sentence must be vacated. When the court fails to state on the record its reasons for the sentence imposed, the sentence must be vacated and the case remanded for resentencing. See *State v. Cooper*, 403 N.W.2d 800, 802 (Iowa Ct. App. 1987).

We note the State concedes the concurrence by the district court was a condition of the plea. The State further concedes the court did not follow the plea agreement thus requiring the sentence to be vacated and the case remanded for resentencing. The State does not, however, concede it is necessary to vacate the plea. We agree.

We conclude the sentence must be vacated, and the case shall be remanded for resentencing. Pursuant to Iowa Rule of Criminal Procedure

2.10(2) the court may proceed to sentencing if the court agrees to be bound by the plea agreement. If the court determines it will not be bound by the plea agreement, the court shall follow the mandates of rule 2.10(4) and afford Strohm an opportunity to withdraw his guilty plea. See *State v. Malone*, 511 N.W.2d 423, 425 (Iowa Ct. App. 1993); *State v. Barker*, 476 N.W.2d 624, 628 (Iowa Ct. App. 1991).

Our disposition of this matter as set out above makes it unnecessary to address the issue of ineffective assistance of counsel.

SENTENCE VACATED AND CASE REMANDED.