IN THE COURT OF APPEALS OF IOWA

No. 2-176 / 11-1135
Filed March 14, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOSE ARGUETA-RIVAS,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Cynthia M. Moisan, District Associate Judge.

A defendant contends that the district court failed to give adequate reasons on the record for imposing a particular sentence against him. **SENTENCE VACATED, CASE REMANDED FOR RESENTENCING.**

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

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, John P. Sarcone, County Attorney, and Kevin Hathaway, Assistant County Attorney, for appellee.

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

VAITHESWARAN, P.J.

Jose Argueta-Rivas entered a written guilty plea to providing alcohol to a person under the legal age, a serious misdemeanor. *See* Iowa Code § 123.47(4) (2011). At the sentencing hearing, the district court ordered Argueta-Rivas "incarcerated for a period of one year," with the sentence suspended. The court also imposed a one-year probation period, a $500 fine, and restitution.

The same day, the court issued a form sentencing order which contained the following boilerplate language:

> The sentence given here in [sic] 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 sentence requirements, if any. Based upon these considerations the following sentence imposed herein is appropriate.

On appeal, Argueta-Rivas contends "the district court failed to give even a terse explanation of why it imposed the sentence it did in this case." *See* Iowa R. Crim. P. 2.23(3)(*d*) (requiring court to state reasons on the record for imposition of a particular sentence.). The State counters that the sentencing transcript and sentencing order reveal several reasons for the sentence. Characterizing the reasons as "succinct," the State asserts they encompass "the relevant sentencing factors set forth in section 901.5." *See* Iowa Code § 901.5 (referring to sentence which "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"); *State v. Barnes*, 791 N.W.2d 817, 827 (Iowa 2010) (noting the statement need not be detailed; only a cursory explanation is needed so long as the appellate court has enough of an indication that the court

exercised its discretion). Our review of this issue is for an abuse of discretion. *Barnes*, 791 N.W.2d at 827.

At the sentencing hearing, the prosecutor began by noting that Argueta-Rivas provided alcohol to a fifteen-year-old girl. The prosecutor acknowledged that Argueta-Rivas had no prior criminal record, but asserted that "due to the seriousness of the offense," he was recommending a 365-day jail sentence with all but fifteen days suspended. The district court asked whether Argueta-Rivas had "any other criminal history," inquired into whether he had a prior relationship with the girl, and asked how Argueta-Rivas came to know the girl. The court then proceeded to impose its sentence but did not articulate any reasons for the sentence. *See State v. Garrow*, 480 N.W.2d 256, 259 (Iowa 1992) ("A sentencing court's statement of its reasons satisfies the rule if it recites reasons sufficient to demonstrate the exercise of discretion and indicates those concerns which motivated the court to select the particular sentence which it imposed."). While we could speculate about those reasons from the questions that were asked as well the answers that were given, we cannot with certainty discern what factors the court deemed important in its sentencing decision. *See State v. Cooper*, 403 N.W.2d 800, 802 (Iowa Ct. App. 1987) ("[A]ppellate courts should not be forced to rely on *post hoc* attempts at divining the district court's motivation from the entirety of the record in order to determine if the district court abused its discretion.").

We turn to the sentencing order. That order made reference to the statutory language of section 901.5, the defendant's prior record, "if any," and "statutorily imposed sentencing requirements, if any." Again, the order did not tie

this language to the sentencing decision in this case. *See State v. Lumadue*, 622 N.W.2d 302, 305 (Iowa 2001) (stating the court should give a "rationale relating to *this* offense, and *this* defendant's background"); *State v. Dvorsky*, 322 N.W.2d 62, 67 (Iowa 1982) ("We have said that the nature of the offense; the attendant circumstances; and the defendant's age, character, propensities, and chances of reform are 'minimal essential factors' to be considered when exercising sentencing discretion.").

As the reasons for the court's sentence are not apparent, we vacate the sentencing decision and remand for resentencing. *See Lumadue*, 622 N.W.2d at 305.

SENTENCE VACATED, CASE REMANDED FOR RESENTENCING.