

IN THE COURT OF APPEALS OF IOWA

No. 2-235 / 11-1318
Filed April 11, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

WILLIAM DALE CURLEY,
Defendant-Appellant.

Appeal from the Iowa District Court for Grundy County, Joseph Moothart (guilty plea) and Jeffrey L. Harris (sentencing), District Associate Judges.

Defendant appeals the sentences on his convictions, based on his guilty plea, to three counts of possession of precursors and one count of transporting anhydrous ammonia. **AFFIRMED.**

D. Raymond Walton of Beecher Law Offices, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Kirby D. Schmidt, County Attorney, and Erika Allen, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., Potterfield, 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.**

William Curley was charged with possession of a precursor (lithium), possession of a precursor (pseudoephedrine), and possession of a precursor (anhydrous ammonia), in violation of Iowa Code section 124.401(4) (2009), class "D" felonies. He was also charged with tampering, possessing, or transporting anhydrous ammonia, in violation of section 124.401F, a serious misdemeanor.

On May 27, 2011, Curley pled guilty to the charges against him. There was no specific plea agreement, but the State agreed to recommend concurrent sentences. The presentence investigation report noted Curley had a lengthy criminal history, including convictions for assault, possession of an offensive weapon, forgery, possession of methamphetamine with intent to deliver, and burglary. The report recommended incarceration for his current offenses.

The sentencing hearing was held on August 12, 2011. The defense presented the testimony of Curley's stepdaughter, a woman who employed Curley's wife, a contractor who had worked with Curley, and Curley's pastor. Each of these witnesses asked that Curley be placed on probation. The court questioned some of the witnesses about the basis for their testimony. Curley also presented letters from people who were supportive of him.

The court engaged in an extensive discussion from the bench about the factors it considered in reaching a decision concerning Curley's sentence. The court noted the factors of rehabilitation, punishment, deterrence, and "the scourge that our society has felt by individuals who engage in this type of misconduct, particularly methamphetamine." The court also noted Curley had

been given several opportunities in the past, but had continued to engage in criminal conduct.

The court sentenced Curley to a term of imprisonment not to exceed five years on each of the three counts of possession of a precursor, to be served concurrently. The court also sentenced him to one year in jail on the charge of transporting anhydrous ammonia, to be served concurrently with the other charges. He was ordered to pay a civil penalty of \$1000. Curley appeals his sentence.

II. Standard of Review.

We review a sentence for the correction of errors at law. *State v. Liddell*, 672 N.W.2d 805, 815 (Iowa 2003). “A sentence will not be upset on appellate review unless the defendant demonstrates an abuse of trial court discretion or a defect in the sentencing procedure, such as trial court consideration of impermissible factors.” *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995).

III. Merits.

A. Curley claims the court considered an impermissible factor at sentencing—the example he set for his family. Even if this was an impermissible factor,¹ an examination of the court’s on-the-record discussion of the factors the court considered does not show this was one of the factors relied upon by the court. The court did not mention the example Curley had presented to his family. We conclude he has not shown the court relied on an impermissible factor.

¹ We make no findings as to whether this was an impermissible factor based on our finding the court did not rely on this factor.

B. Curley also claims the court impermissibly intervened in the sentencing hearing by questioning some of the witnesses. He asserts the court assumed a partisan role in the proceedings. Curley contends he received ineffective assistance because defense counsel did not object to the court's questioning of the witnesses.

A court's role is not restricted to the functions of an umpire or referee, but "[a] trial court has the duty to control and conduct its court in an orderly, dignified and proper manner." *State v. Houston*, 439 N.W.2d 173, 177 (Iowa 1989). Iowa Rule of Evidence 5.614(b) provides, "When necessary in the interest of justice, the court may interrogate witnesses, whether called by the court or by a party." See also *Mills v. State*, 383 N.W.2d 574, 577 (Iowa 1986). However, this practice is not encouraged. *State v. Cuevas*, 288 N.W.2d 525, 531 (Iowa 1980).

The court may direct questions to witnesses as long as the questioning is impartial and not prejudicial. *In re Marriage of Worthington*, 504 N.W.2d 147, 149 (Iowa Ct. App. 1993). Furthermore, "[a] trial judge is allowed greater latitude to comment during a bench trial than might be acceptable during a jury trial." *Id.* Concerns about comments or questions that may prejudice a jury are not present in a bench trial, or during sentencing. *Id.*

We conclude the district court did not act improperly in questioning three of the witnesses who testified on Curley's behalf at the sentencing hearing. Obviously, no jury was present during the sentencing hearing, so there are no concerns the questions may have prejudiced a jury. The court specifically stated it was not attempting to prosecute the case, instead saying it wanted to find out "where [the witnesses] are coming from." The court's questions were directed to

finding out why the witnesses sought probation for Curley. Because we have determined the court did not act improperly, we also determine Curley did not receive ineffective assistance due to counsel's failure to object to the court's questions.

C. Finally, Curley claims the court abused its discretion in sentencing him to a term in prison rather than granting him probation. He points out he had been free of any drug-related criminal offenses from 2000 until the present offense in 2010. Curley asserts he had overcome his drug addiction and he was no longer a threat to the community.

As noted above, the court carefully considered the testimony of the witnesses at the sentencing hearing, the letters presented on Curley's behalf, and Curley's own statement to the court. The court considered Curley's age and his lengthy criminal history, as well as the factors of rehabilitation, punishment, deterrence, and the problems methamphetamine presents to society. We conclude the court did not abuse its discretion in sentencing Curley to a term of imprisonment.

We affirm the decision of the district court.

AFFIRMED.