

IN THE COURT OF APPEALS OF IOWA

No. 2-342 / 11-1623
Filed May 23, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DONYALE MARIA JONES,
Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Carlynn D. Grupp, Judge.

A defendant appeals from the judgment and sentence entered following her guilty plea to identity theft. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Martha J. Lucey, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Carlyle D. Dalen, County Attorney, and Steven D. Tynan, Assistant County Attorney, for appellant.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

TABOR, J.

Donyale Maria Jones challenges the sentence imposed by the district court following her guilty plea to identity theft. She contends the court abused its discretion by failing to state a reason for choosing the particular jail term and suspended sentence. Because we find that the court's statements regarding the escalating nature of Jones's criminal offenses adequately reflect its rationale for declining to defer judgment, we affirm.

I. Background Facts and Proceedings.

The Cerro Gordo County Attorney charged Jones with two counts of identity theft after she fraudulently obtained services from Mediacom Cable and Alliant Energy by placing these utilities in the names of two young children. Authorities discovered the identity theft when creditors began pursuing the debt incurred on these accounts. Jones entered a plea of guilty to one count of identity theft. In return, the State agreed to recommend that Jones be sentenced to one year in jail with all but thirty days suspended, and one year of probation, as well as dismissal of the second count.

The district court accepted Jones's guilty plea and proceeded to sentencing during a hearing on October 3, 2011. The court denied Jones's request for deferred judgment and sentenced her to one year in jail with all but fifteen days suspended; the court also ordered her to pay a fine of \$625 and other costs. The court also required Jones to pay restitution in the amount of \$868.61.

Jones filed a timely notice of appeal. In her briefing, she does not contest her conviction, but asks for resentencing.

II. Scope and Standard of Review.

We review the imposition of criminal sentences for correction of legal error. *State v. Hennings*, 791 N.W.2d 828, 833 (Iowa 2010). We will reverse the district court only if we find an abuse of discretion or some defect in the sentencing procedure. *Id.* A court abuses its discretion by basing the sentence on clearly untenable grounds. See *State v. Barnes*, 791 N.W.2d 817, 827 (Iowa 2010). Our rules of criminal procedure require the sentencing court to state on the record its reason for a particular sentence. Iowa R. Crim. P. 2.23(3)(d). The rule does not require detailed reasons for the sentence imposed, but the court must provide “at least a cursory explanation” to allow appellate review of its discretionary action. *Barnes*, 791 N.W.2d at 827.

III. Analysis.

Jones contends the district court abused its discretion by failing to state on the record its reason for imposing a jail term and probation instead of granting her request for a deferred judgment. In her words: “A criminal defendant should not have to guess why the court imposed a particular sentence.”

At the sentencing hearing, the court stated:

Ms. Jones, the court is required to enter an order that considers your rehabilitation and the protection of the community and to do so based upon your age, employment, family and economic circumstances, the nature of this charge, your prior criminal record, and everything the court knows about you through these proceedings.

After providing this general description of the factors to be considered in sentencing, the court turned to Jones's criminal record:

This would be your tenth conviction for some type of law violation since 2007. The first nine involved either driving or status—driving status violations except the harassment which was your very first charge. This charge involves truthfulness and veracity and the use of identity when you had no right to do so and by that process you obtained goods and services and you have an obligation to pay back the people that provided those believing they were doing so with the proper consents and authorities.

The court then ordered her to repay the cable and energy company for the pecuniary damages she caused and denied her request for deferred judgment.

Jones focuses on the court's introductory statement, arguing this mere recitation of factors was insufficient to inform her which consideration influenced its sentencing decision. While the court could have been less subtle in tying the general sentencing factors to its reason for choosing Jones's particular sentence, it is much easier to dissect a transcript on appeal than achieve precision in the throes of giving an extemporaneous explanation of the reasons for choosing a particular punishment. *See generally State v. Thomas*, 520 N.W.2d 311, 313 (Iowa Ct. App. 1994) (recognizing "sentencing process can be especially demanding and requires trial judges to detail, usually extemporaneously, the specific reasons for imposing the sentence").

We believe it is important that the court not only mentioned the general sentencing considerations, but went on to discuss this defendant's particular criminal history and the escalating nature of her offenses. From its entire

statement on the record, we are able to discern the court's proper exercise of its discretion. Accordingly, we affirm.

AFFIRMED.