

IN THE COURT OF APPEALS OF IOWA

No. 2-501 / 11-1260
Filed July 25, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DEMONTE LESHONE HARPER,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mary E. Howes (plea) and Thomas G. Reidel (sentencing), Judges.

Defendant appeals the sentence imposed following his plea of guilty.

AFFIRMED.

Tomas Rodriguez, Moline, Illinois, and Eric Puryear of Puryear Law, P.C., Davenport, for appellant.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant Attorney General, Michael J. Walton, County Attorney, and Kelly Cunningham, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

EISENHAUER, C.J.

Demonte Harper appeals from a district court order sentencing him to concurrent five-year prison terms for possession of marijuana with intent to deliver in violation of Iowa Code section 124.401(d) (2011). Harper argues the district court abused its discretion in sentencing. We affirm.

We review for errors at law. *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). “Where, as here, [Harper] does not assert the imposed sentence is outside the statutory limits, the sentence will be set aside only for an abuse of discretion.” *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). The district court’s sentencing decision is “cloaked with a strong presumption in [its] favor.” *Id.*

Harper asserts three errors concerning the sentence imposed: a word in the presentence investigation report (PSI), the cost to taxpayers for his incarceration, and the court’s alleged failure to consider “less-restrictive forms of punishment.”

In sentencing Harper, the district court stated:

[M]y duty under the law is [to] review what is available to me in terms of community resources and determine what the appropriate rehabilitative plan would be for you and keeping in mind that the public must be protected. In doing so I look at the seriousness of the crime, the effect that this crime has upon members of the community and your willingness to accept change and treatment and what is available in this community to assist you in that process.

The court took into account Harper’s criminal history, which indicated to the court Harper has not “quite figured out” how “to be a law-abiding member of the community” despite past judicial intervention. The court also considered the

seriousness of the crime, evidenced by the large quantity of marijuana involved, and concluded a sentence of incarceration was warranted. The court ordered concurrent sentences to protect the community while giving Harper “motivation and opportunity to do the best you can while incarcerated [and] come out and hit the ground running as a productive member of society.”

On appeal, Harper first argues the district court should not have considered the PSI because the report labeled his *extensive* criminal history as “horrendous.” The sentencing court did note Harper’s criminal history and, moreover, is required by statute to consider the PSI. See Iowa Code § 901.5. Furthermore, we trust a single adjective would not unduly influence a judge’s sentencing decision.

Harper also argues the trial court failed to consider its duty to the public—specifically the burden upon the public purse resulting from his incarceration. Harper cites no authority for this proposition and, consequently, this argument is waived. Iowa R. App. P. 6.903(2)(g)(3).

Finally, Harper argues the district court gave no consideration to less restrictive forms of punishment. We disagree. The district court explicitly stated: “In the entire thought process, I look at the least restrictive alternatives first and then proceed to the most restrictive alternatives.”

We conclude the district court did not abuse its discretion in sentencing Harper.

AFFIRMED.