

IN THE COURT OF APPEALS OF IOWA

No. 2-719 / 12-0017
Filed September 6, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTFER FARLEY,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark J. Smith,
Judge.

A defendant appeals from his conviction asserting the court abused its
discretion in considering impermissible factors in sentencing him. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney
General, Michael J. Walton, County Attorney, and Will Ripley and Joe Grubisich,
Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

VOGEL, P.J.

Christfer Farley appeals his sentence following his guilty plea to two counts of third-degree burglary, one count of forgery, and one count of second-degree theft. The convictions arose out of an incident in Scott County where Farley broke into two vehicles and stole purses containing wallets, credit cards, identification information, cell phones, and gift cards. The credit cards were later used by Farley to purchase \$100 gift cards and an iPad.

After pleading guilty to the charges, Farley proceeded to sentencing on December 29, 2011, where the court ordered Farley to serve a prison term not to exceed two years on each of the burglary convictions and a prison term not to exceed five years on the forgery and theft convictions. The sentences were ordered to run concurrently. At sentencing the district court stated in part:

The Court takes into consideration your prior criminal behavior, as well as the multiple charges that you are charged with in this case. You also—the Court notes that during your stay in the Scott County Jail you were involved in a fight, which did place you in the special management population, which indicates to the Court that you're a threat to the community, and therefore the Court finds that a period of incarceration is warranted.

Farley claims the district court abused its discretion in relying on the “uncharged, unproven, and non-admitted assault” in the jail in determining the court should impose incarceration instead of suspending the sentence. The State asserts Farley admitted to the incident in the presentence investigation report, and thus, the district court could properly rely on it in determining what sentence should be imposed.

We review a district court's sentencing decision that is within the statutory limits for abuse of discretion. *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa

2002). Our duty on appeal is not to second guess the district court's decision but to determine if it was unreasonable or based on untenable grounds. *Id.* at 725.

Unproven or unprosecuted offenses may not be considered in sentencing unless "(1) the facts before the court show the accused committed the offense, or (2) the defendant admits it." *State v. Gonzalez*, 582 N.W.2d 515, 516 (Iowa 1998). A statement to a presentence investigator can constitute an admission. *Id.* at 517.

The presentence investigation report stated, "It is known that the defendant was in the special management population during his current stay at the Scott County Jail. He advised that he was the aggressor in a fight with another inmate which resulted from a game of cards." Defense counsel stated during sentencing that he and his client had reviewed the presentence investigation report and "did not find any factual matters to correct." As we find the statements Farley made to the presentence investigator constitute an admission to the assault incident in the jail, the district court did not abuse its discretion in considering the incident when it imposed the sentence.

AFFIRMED.