

IN THE COURT OF APPEALS OF IOWA

No. 2-742 / 11-1947
Filed November 15, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHARLES LEE GRIFFITH,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson,
Judge.

Appeal from judgment and sentence following guilty plea. **AFFIRMED.**

Thomas Graves of Graves Law Firm, P.C., Clive, for appellant.

Thomas J. Miller, Attorney General, Linda Hines, Assistant Attorney
General, John P. Sarcone, County Attorney, and Joseph D. Crisp, Assistant
County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ.

EISENHAUER, C.J.

Charles Griffith appeals from the judgment and sentence imposed following his guilty plea to possession of a controlled substance with intent to deliver, as a second or subsequent offender, and as an habitual offender. He contends the court abused its discretion in imposing a prison term instead of probation as recommended in the presentence investigation (PSI) and in tripling the penalty without considering the predicate felony was ten years old. We affirm.

The plea agreement provided the State would not seek a prison term in excess of thirty years, it would dismiss a second count, and Griffith would be free to argue for any legal disposition. At sentencing, the State recommended a thirty-year prison term. Griffith sought supervised probation, referring to the PSI recommendation for probation, his participation in community-based services, his employment, his remorse, and his family support.

The district court considered the PSI, Griffith's extensive criminal history, his age, the progression and types of his offenses, the need to protect the community, and Griffith's chances for rehabilitation. It concluded the protection of the public was paramount and imposed a prison term not to exceed fifteen years.

We review sentencing decisions for correction of errors at law. Iowa R. App. P. 6.907.

Sentencing decisions of the district court are cloaked with a strong presumption in their favor. Where, as here, a defendant does not assert that the imposed sentence is outside the statutory limits, the sentence will be set aside only for an abuse of discretion. An abuse of discretion is found only when the sentencing court

exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable.

State v. Thomas, 547 N.W.2d 223, 225 (Iowa 1996). (citations omitted). “When a sentence is not mandatory, the district court must exercise its discretion in determining what sentence to impose.” *Id.* Iowa Rule of Criminal Procedure 2.23(3)(d) requires a sentencing court to demonstrate its exercise of discretion by stating “on the record its reason for selecting the particular sentence.” “The sentencing court, however, is generally not required to give its reasons for rejecting particular sentencing options.” *Thomas*, 547 N.W.2d at 225. In considering sentencing options, the court is to determine, in its discretion, which of the authorized sentences will provide both the maximum opportunity for the rehabilitation of the defendant and for the protection of the community from further offenses by the defendant and others. Iowa Code § 901.5; see also *State v. Hildebrand*, 280 N.W.2d 393, 395 (Iowa 1979).

Griffith contends the court should not have rejected the PSI recommendation for supervised probation. He argues he took responsibility for his actions, was participating in outpatient substance abuse treatment, was providing clean drug screens, had a job, and had family support. He asserts the court did not seriously consider the maximum opportunity for his rehabilitation.

The PSI shows Griffith received probation three times previously and had his probation revoked twice. The PSI investigator was unable to verify Griffith’s claim he had a job waiting for him in Colorado. Griffith has no home of his own, but most recently has lived either with one of his daughters in Colorado or with his stepfather in Des Moines. The court stated it did not believe what Griffith said

during the sentencing hearing. The court gave sufficient reasons for its exercise of discretion in imposing a prison sentence. Considering Griffith's nearly thirty-year criminal history, his lack of success on probation, and the escalation from using illegal drugs to selling illegal drugs, the court did not abuse its discretion in determining the goal of protecting the public was "above all else at this point."

Griffith also contends the court, in considering whether to enhance the sentence, should have noted the predicate prior offense was ten years prior to the instant offense. He acknowledges Iowa Code section 124.411 gives the court discretion to increase the otherwise authorized indeterminate sentence for second or subsequent offenses up to triple the sentence, but because the predicate prior offense was ten years ago, he contends the court should have exercised its discretion not to enhance the penalty. However, the court did not utilize section 124.411 in sentencing Griffith. The sentencing order cites to sections 902.9 and 902.3 as authority for its fifteen-year sentence. Under section 902.9(3), the maximum sentence for an habitual offender is fifteen years. The State recommended doubling the sentence to a thirty-year sentence. The court exercised its discretion not to enhance the sentence. We find no abuse of discretion.

AFFIRMED.