

**IN THE COURT OF APPEALS OF IOWA**

No. 2-900 / 12-0171  
Filed December 12, 2012

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**GEORGE WAYNE SIMONS,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

Defendant appeals the sentence imposed for operating while intoxicated (second offense). **AFFIRMED.**

Jeffrey L. Powell of The Law Office of Jeffrey L. Powell, Washington, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Alan Ostergren, County Attorney, and Kevin McKeever, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

**EISENHAUER, C.J.**

Did the court consider unproven charges when sentencing George Wayne Simmons and/or did the court abuse its discretion? We find neither and affirm.

We review sentencing decisions for correction of errors at law. *State v. Valin*, 724 N.W.2d 440, 444 (Iowa 2006). Simmons pleaded guilty to operating while intoxicated (second offense) and was sentenced to a term of imprisonment not to exceed two years. During sentencing, the district court considered the presentence investigation report (PSI) and stated:

I have never seen a criminal history that has so many entries where there's no disposition, so obviously I'm not holding those against you, but here's at least two pages worth of offenses where there's no disposition. So, as I said, I'm only going to consider those where there's a conviction.

We conclude the sentencing court's noting a high number of unproven charges in a PSI does not translate into improperly considering those charges, especially when the court clearly states otherwise. The record does not show the court relied on any unproven charges during sentencing. *See State v. Jose*, 636 N.W.2d 38, 41 (Iowa 2001).

We review the sentence imposed for abuse of discretion. *State v. Zaruba*, 306 N.W.2d 772, 732 (Iowa 1981). Simmons must establish the court's "discretion was exercised only on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Id.* The sentencing court carefully reviewed and noted the PSI, detailing the defendant's history of criminal behavior and discussing attempts at overcoming substance abuse and whether jail or prison will best assist in rehabilitation. The court imposed a sentence within the limits imposed by the statute. We find no abuse of discretion.

**AFFIRMED.**