

IN THE COURT OF APPEALS OF IOWA

No. 3-1176 / 13-0805
Filed January 9, 2014

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DERIK ODELL,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark D. Cleve,
Judge.

A defendant contends the district court abused its discretion in sentencing
him. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney
General, Michael J. Walton, County Attorney, and Kimberly Shepherd, Assistant
County Attorney, for appellee.

Considered by Danilson, C.J., and Vaitheswaran and Potterfield, JJ.

VAITHESWARAN, J.

Derik Odell pled guilty to third-degree burglary. The district court entered a deferred judgment and placed him on probation for two years.

Before long, the State reported that Odell had violated the terms of his probation. Following a hearing, the district court revoked the deferred judgment and sentenced Odell to a prison term not exceeding five years. This court affirmed the findings of probation violations and the revocation of Odell's deferred judgment but, based on omissions in the sentencing proceedings, remanded for resentencing. See *State v. Odell*, No. 12-1113, 2013 WL 751294, at *3 (Iowa Ct. App. Feb. 27, 2013).

On remand, the district court re-imposed a prison term not exceeding five years. The court reasoned as follows:

The Court has taken into consideration the defendant's request for essentially probation in this matter and the Court determines that is not the sentencing option that is one the Court should embrace at this time noting in particular that this sentencing arose in connection with a probation revocation proceeding and that the defendant had been given extensive opportunities on supervised probation and had not complied with probation As has been noted earlier this matter was remanded on the question of allowing the defendant in matter of allocution at the time of sentencing, however, the remaining aspects of that sentencing were not disturbed by the Court of Appeals particularly the revocation of the deferred judgment.

On appeal from the remand order, Odell contends the district court abused its discretion in imposing sentence. See *State v. Lange*, 831 N.W.2d 844, 848 (Iowa 2013). He cites the fact that he did not "pick[] up any new charges while his appeal was pending," he was "employed," and "he spends all of his time either at work or with his children."

The district court found Odell's prospects for rehabilitation dim. This was an appropriate consideration. See Iowa Code § 901.5 (2009) (stating an appropriate sentence "will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others"). Indeed, this was the consideration the court cited in its original order revoking probation and one we approved in Odell's prior appeal. *Odell*, 2013 WL 751294, at *3 (rejecting assertion that court did not include adequate reasons for the sentence and approving statement that "Mr. Odell has been given every reasonable opportunity to comply with the terms of his probation in the community and . . . there is simply nothing further to be done along that line"). Accordingly, we affirm Odell's sentence.

AFFIRMED.