

IN THE COURT OF APPEALS OF IOWA

No. 3-288 / 11-2061
Filed May 15, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

FRANK D. TEAGUE,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Thomas G. Reidel,
Judge.

Defendant appeals his sentence for the offense of driving while revoked.

AFFIRMED.

Lori J. Kieffer-Garrison, Davenport, for appellant.

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

Considered by Vogel, P.J., Bower, J., and Sackett, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

SACKETT, S.J.

Frank Teague appeals contending the district court abused its discretion in sentencing him on the charge of driving while revoked. He contends it was an abuse of discretion for the court to consider evidence introduced in a criminal trial where Teague was acquitted and for the court not to review other factors such as his age and attending circumstances. The district court did not abuse its discretion, and we affirm.

FACTUAL BACKGROUND. On October 5, 2010, an Iowa State Patrol officer, Christopher Dawson, was driving on Interstate 80 in Scott County, Iowa, when he noticed a vehicle traveling at thirty-two miles per hour in a sixty-five mile-per-hour zone. He followed the vehicle and saw it swerve into the next lane and back again. Officer Dawson stopped the vehicle, which was driven by Frank Teague.

Teague was charged with operating while intoxicated (OWI), third offense, in violation of Iowa Code section 321J.2(2)(c) (2009), a class “D” felony, and driving while revoked, in violation of section 321J.21, a serious misdemeanor. The State also alleged Teague had committed the simple misdemeanors of failure to yield to an emergency vehicle, in violation of section 321.324; improper use of lanes, in violation of section 321.306; and failure to maintain a minimum speed, in violation of section 321.294.

Teague entered guilty pleas to driving while revoked, failure to yield to an emergency vehicle, improper use of lanes, and failure to maintain a minimum

speed. The charge of OWI, third offense, was tried to a jury, and Teague was acquitted of that charge.

A sentencing hearing on Teague's conviction for driving while revoked was held on November 18, 2011. The State recommended that Teague be sentenced to 365 days in jail, with all but thirty days suspended. Teague requested that he be sentenced to 120 days in jail, with all of it suspended. In sentencing Teague the district court said:

Mr. Teague, my duty under the law is to review what is available to me in terms of community resources and to determine what the appropriate rehabilitative plan for you would be but to also consider that the public must be protected. In doing so, I look at the seriousness of the crime, the effect this crime has upon members of the community, your willingness to accept change and treatment, and what is available in the community to assist you in that process. In this entire thought process, I look first at the least restrictive alternatives and then proceed to the more restrictive alternatives.

In this case, I did have the benefit of sitting through the trial.^[1] I got—was able to see the video. It shows your manner of driving. I was able to see the video that showed your behavior at the time of the stop. The Court does agree that your manner of driving was dangerous and provided a risk to members of the community. The Court also believes you were manipulative with the police officers at the time of the stop.

The court also said it considered Teague's driving record.

The court sentenced Teague to 365 days in jail, with all but ten days suspended. The court imposed a fine of \$1000, but determined Teague could satisfy the fine by performing 190 hours of community service. Teague appeals his sentence for driving while revoked.

¹ It is clear the court is referring to the trial on the OWI, third offense, in violation of Iowa Code section 321J2.2(2)(c), of which Teague was acquitted.

SCOPE OF REVIEW. We review a sentence in a criminal case for the correction of errors at law. *State v. Kramer*, 773 N.W.2d 897, 898 (Iowa Ct. App. 2009). “A sentence will not be upset on appellate review unless the defendant demonstrates an abuse of trial court discretion or a defect in the sentencing procedure, such as trial court consideration of impermissible factors.” *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995). One impermissible factor is the consideration of another criminal offense, unless the facts before the court show the defendant committed the offense. See *State v. Longo*, 608 N.W.2d 471, 474 (Iowa 2000). “It is a well-established rule that a sentencing court may not rely upon additional, unproven and unprosecuted charges unless the defendant admits to the charges or there are facts presented to show the defendant committed the offenses.” *State v. Formaro*, 638 N.W.2d 720, 725 (Iowa 2002); *State v. Black*, 324 N.W.2d 313, 315-16 (Iowa 1982). “We will not draw an inference of improper sentencing considerations which are not apparent from the record.” *Formaro*, 638 N.W.2d at 725.

DISCUSSION. Teague contends the district court improperly imposed a sentence for the offense of driving while revoked based on a determination that he had committed OWI, third offense. He contends the judge did not agree with the jury’s verdict on the OWI charge, and that influenced the court’s discretion in imposing sentence for driving while revoked.

While the court did say it had the benefit of sitting through the OWI trial, the court did not reference the issue of intoxication, which was the basis of the OWI charge on which Teague was acquitted.

Teague had entered guilty pleas to failure to yield to an emergency vehicle, improper use of lanes, and failure to maintain minimum speed based on the record made at trial. These pleas support the court's conclusion Teague's "manner of driving was dangerous and provided a risk to members of the community," without consideration of whether Teague had been operating while intoxicated.

The court also stated Teague's sentence was based upon community resources, the need for rehabilitation to Teague, the need to protect the public, the seriousness of the crime, the affect the crime had upon members of the community, Teague's willingness to accept change and treatment, and Teague's driving record. The court demonstrated its exercise of discretion by stating on the record the reasons for the particular sentence imposed in this case. See *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). The reasons given by the district court are appropriate, and we conclude the court did not abuse its discretion in sentencing Teague for driving while revoked.

We affirm the decision of the district court.

AFFIRMED.