

IN THE COURT OF APPEALS OF IOWA

No. 3-291 / 12-0738
Filed April 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MANDOLA M. POPE,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Karen A. Romano,
Judge.

Defendant appeals the district court's resentencing order. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney
General, John Sarcone, County Attorney, and Michael T. Hunter, Assistant
County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

VOGEL, P.J.

Mandola Maurice Pope appeals from the district court order resentencing him for the offense of failure to comply with sex offender registry, second or subsequent offense, in violation of Iowa Code section 692A.111 (2009).¹ He argues the district court erred in considering improper factors in determining his sentence: specifically unproven criminal offenses.

We will overturn sentencing determinations only for abuse of judicial discretion or consideration of inappropriate matters. *State v. Laffey*, 600 N.W.2d 57, 62 (Iowa 1999). We recognize a strong presumption in favor of a district court's sentencing decision if it is within statutory limits. *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). To overcome the presumption, a defendant must affirmatively show the district court relied on improper evidence such as unproven offenses. *State v. Jose*, 636 N.W.2d 38, 41 (Iowa 2001). If a court considers an improper factor, we may not speculate about the influence of that factor in the sentencing determination. *State v. Carrillo*, 597 N.W.2d 497, 501 (Iowa 1999). However, the mere fact the sentencing court was aware of improper matter, such as unproven charges, is not sufficient to overcome the presumption it properly exercised its sentencing discretion. *State v. Ashley*, 462 N.W.2d 279, 282 (Iowa 1990).

The district court stated it reviewed the presentence investigation report (PSI), in which the author recommended incarceration. The PSI reflected the defendant had "an extensive criminal history both in Iowa and Illinois." The

¹ Pope was granted postconviction relief and ordered to be resentenced because the original sentencing court sentenced him to ten years imprisonment for a class "C" felony when the guilty plea provided a factual basis for only a class "D" felony.

report detailed seven charges in Illinois and six in Iowa that did not result in conviction. It also detailed five Illinois convictions and thirty-three Iowa convictions.

We conclude the statement by the court falls far short of an affirmative showing that the sentencing court relied on unproven charges in sentencing Pope. This was not a situation in which the court made specific reference to a dismissed or unproven crime. See *Jose*, 636 N.W.2d at 42-43 (comparing the statements “additional crimes” and “prior criminal history” to cases in which the court specifically mentioned dismissed charges). Pope’s criminal history can be described as extensive apart from any unproven criminal history. Pope failed to point out, nor have we found, anything in the trial court’s statement of reasons that indicates it relied on any unproved or unprosecuted offenses appearing in the PSI report.

We therefore affirm the district court’s sentence pursuant to Iowa Court Rule 21.29(1)(a) and (e).

AFFIRMED.