

IN THE COURT OF APPEALS OF IOWA

No. 3-367 / 12-1330
Filed May 15, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RONALD LEROY DIGGS,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Stephen B. Jackson Jr., Judge.

A defendant appeals his sentence imposed claiming the court relied on an improper consideration and failed to articulate its reasoning. **AFFIRMED.**

Thomas J. Viner of Jacobsen, Johnson & Viner, P.L.C., Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Tyler J. Buller, Assistant Attorney General, Jerry Vander Sanden, County Attorney, and Nicholas Maybanks, Assistant County Attorney, for appellee.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

MULLINS, J.

Ronald Diggs appeals the sentence imposed following his guilty plea to possession of a controlled substance (crack cocaine), in violation of Iowa section 124.401(5) (2011), an aggravated misdemeanor. He claims the court was improperly influenced by a pending drug charge when it sentenced him to a suspended two-year term and placed him on probation for two years. He also claims the court failed to make sufficient findings to support the sentence imposed and failed to comply with the notice requirements under section 901.5(9).

The sentencing hearing on the current charge was held at the same time as a status conference on a pending drug-possession charge. At the beginning of the joint hearing, the court was informed by the State that Diggs would be filing a motion to dismiss based on speedy-trial grounds. The court advised the parties to get a hearing on that motion scheduled before the trial date that had already been set. Diggs also requested the bond on that charge be exonerated pending the hearing on the motion to dismiss. The court granted the exoneration request when the State did not resist.

After the status conference, the court then turned its attention to sentencing on the current charge. There was no sentencing recommendation in the plea agreement. Diggs's attorney requested a sentence of time served and argued probation would not be necessary. The court, in imposing the sentence, stated:

I have reviewed the court file, I've heard the arguments of counsel, and the statements of the Defendant. It appears that, Mr.

Diggs, you have a substance abuse problem that has caused you a lot of problems with the criminal justice system and that you just haven't been able to get over. In addition, you were ordered to receive a substance abuse evaluation, which I understand that you did, and based on that, you were ordered to complete an intensive outpatient treatment program, and my understanding is that you have not completed that program. You've also had problems on pretrial release that's caused you to be in and out of jail while this cause has been pending.

....

My reasons for this sentence are as previously mentioned, this provides the maximum chance for the Defendant to rehabilitate and address substance abuse issues which have caused the Defendant a number of problems, and Defendant has had to deal with those issues in the criminal justice system on a number of occasions previously, the nature of the offense, the Defendant's prior record, and the statements made by counsel today.

In the sentencing order the court supplemented its on-the-record reasons for the sentence imposed when it stated:

The Court's reasons for sentencing as the Court has in this case are as follows:

1. The Defendant's age.
2. The nature and circumstances of this offense.
3. The Defendant's need for rehabilitation and the Defendant's potentiality therefor.
4. This sentence will hold the Defendant accountable for [his] actions and should act as a deterrent against future offenses by this defendant and others.
5. This sentence will provide protection for the community.
6. Defendant's prior record.

There was no presentence investigation done, but the trial information contained a list of six prior controlled substance related convictions, and Diggs's attorney at the sentencing hearing acknowledged the prior record stating the list was the whole of Diggs's prior drug offense history encompassing nearly eight years.

We review a district court's sentencing decision that is within the statutory limits for abuse of discretion. *State v. Hennings*, 791 N.W.2d 828, 833 (Iowa

2010). “[T]he decision of the district court to impose a particular sentence within the statutory limits is cloaked with a strong presumption in its favor.” *State v. Bentley*, 757 N.W.2d 257, 262 (Iowa 2008) (citation omitted). “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).

Diggs asserts the pending charges “necessarily had an effect” on the district court and the status conference on the pending charge was “undeniably intertwined” with the sentencing decision. Yet he points to no language in either the district court’s colloquy or in its written sentencing order that indicates it considered the pending charges when it ordered him to serve a two-year suspended sentence. “We will not draw an inference of improper sentencing considerations which are not apparent from the record.” *Id.* Speculation is not sufficient to prove the district court abused its discretion in sentencing. In addition, the court’s consideration of Diggs problems with pretrial release was not an abuse of discretion. See *State v. Grey*, 514 N.W.2d 78, 79 (Iowa 1994) (finding no abuse of discretion when the sentencing court considered the defendant’s prior record and the report of his pretrial release supervisor).

Diggs also asserts the district court did not make specific findings for imposing the sentence that it did and it erred in not making the public announcement required by section 901.5(9).¹ The manifest intent of section

¹ Iowa Code section 901.5(9) provides:

901.5(9) is “to inform the public of the true dimension of the sentence imposed.” *State v. Johnson*, 513 N.W.2d 717, 720 (Iowa 1994). It was not meant to impart any information to Diggs that is necessary for valid sentencing, and thus, Diggs was not harmed by its omission. *Id.*

We also find the district court provided sufficient reasons for the sentence imposed. The court stressed its concern for Diggs’s substance abuse problems and his prior criminal history. The court found the suspended sentence and two-years of probation provided Diggs with the maximum chance for rehabilitation and an opportunity to address his substance abuse issues through the recommended outpatient program. We find no abuse of discretion in the district court’s sentencing decision.

AFFIRMED.

If the defendant is being sentenced for an aggravated misdemeanor or a felony, the court shall publicly announce the following:

a. That the defendant's term of incarceration may be reduced from the maximum sentence because of statutory earned time, work credits, and program credits.

b. That the defendant may be eligible for parole before the sentence is discharged.

c. In the case of multiple sentences, whether the sentences shall be served consecutively or concurrently.