

IN THE COURT OF APPEALS OF IOWA

No. 3-453 / 12-1909
Filed May 30, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KELLY MARIE BROWN,
Defendant-Appellant.

Appeal from the Iowa District Court for Webster County, Thomas J. Bice,
Judge.

Kelly Brown appeals from the sentence imposed by the district court
following her guilty plea to the charge of aiding and abetting forgery.

AFFIRMED.

Mark C. Smith, State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney
General, and Ricki N. Osborn, County Attorney, for appellee.

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

DOYLE, P.J.

Kelly Brown appeals from the sentence imposed by the district court following her guilty plea to the charge of aiding and abetting forgery, in violation of Iowa Code sections 703.1(1), 715A.1(1), and 715A.2(2)(a) (2011), a class D felony. Brown contends the district court abused its discretion in denying her request for a deferred judgment. We affirm.

At Brown's sentencing hearing the State recommended a five-year suspended sentence with probation for a period of two years, plus payment of restitution. The presentence investigation report recommended probation and payment of restitution. Brown, through counsel, requested a deferred judgment.

After Brown made her statement of allocution, the district court stated:

Miss Brown, I've reviewed your file. I have reviewed the presentence investigat[ion] report. And for your information, I am going to reject the request by your counsel for a deferred judgment; and I want you to know why. If you were twenty, twenty-five years younger and you had no criminal record, I would be tempted to give you a deferred judgment. But you're middle-aged; and when you get to be that age, you need to know better. And you do know better. I know you do.

Brown acknowledged she knew better. The court continued:

And it's because of that that I'm not going to give you a deferred judgment. But at the same time, I'm confident that you will be able to fulfill, without difficulty, your terms of probation and that you will move forward in a positive manner in terms of your obligations of citizenship. But that's the reason why—it's because of your age as much as anything—that I reject your request for deferred judgment. I just don't feel that it's applicable to people that have had life experiences that you've had and certainly should know better, given the nature of the crime.

The other thing that works against that is that this was a scheme. There were multiple people involved; and the amount of money involved here, the \$782.64, I believe is significant also. That would work against a deferred judgment.

After some discussion with Brown's counsel, the court went on to say:

And, again, because of her age, that is the primary reason for the rejection of the request for a deferred judgment And I appreciate your passion and the force of your argument. But under the circumstances, I'm going to reject it. You know, at her age—she's middle-aged.

What? [Brown is forty-six, forty-eight] years old?

She's had family. She's been through financial crises. And all of these things should add to a person's ability to make good judgments and to stay away from this type of behavior.

Brown was actually forty-four at the time she committed the crime, and her counsel objected to the court's denial of a deferred judgment based on Brown's age. In response, the court stated:

Well, then I'll disregard her age, and I will simply say that from a person in her position in the life cycle, she should know better.

. . . .

. . . [I]f you're saying I'm using her age for a discriminatory purpose—to which I take exception. I am simply saying for record purposes that's not the case. By her own admission, she says she knew better. She's got grandchildren. That's her statement. And I'm just saying, given those types of comments, that a person in her state, relative to her cycle of life as I say, should know better. And it's because of that that I am rejecting your argument for a deferred judgment.

The court then adjudicated Brown guilty of aiding and abetting forgery, and it imposed a five-year suspended sentence. Brown was placed on probation for two years. She was ordered to pay a fine, surcharges, and restitution.

Brown now appeals, contending the district court abused its discretion in denying her request for a deferred judgment. We review the sentence imposed by the district court for errors at law. Iowa R. App. P. 6.907; *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000). A sentence will not be upset on appeal “unless the defendant demonstrates an abuse of trial court discretion or a defect

in the sentencing procedure *Grandberry*, 619 N.W.2d at 401. Moreover, the court's sentencing decisions

are cloaked with a strong presumption in their favor. Where, as here, a defendant does not assert that the imposed sentence is outside the statutory limits, the sentence will be set aside only for an abuse of discretion. An abuse of discretion is found only when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable.

State v. Thomas, 547 N.W.2d 223, 225 (Iowa 1996) (citations omitted); see also *State v. Bentley*, 757 N.W.2d 257, 262 (Iowa 2008).

Pursuant to Iowa Code section 901.5, a deferred judgment was a sentencing option which could be exercised "in the discretion of the court" in this case. See Iowa Code § 907.3. "When a sentence is not mandatory, the district court must exercise its discretion in determining what sentence to impose." *Thomas*, 547 N.W.2d at 225. In considering sentencing options, the court is to determine, in its discretion, which of the authorized sentences will provide both the maximum opportunity for the rehabilitation of the defendant and for the protection of the community from further offenses by the defendant and others. Iowa Code § 901.5; *State v. Hildebrand*, 280 N.W.2d 393, 395 (Iowa 1979). "The courts owe a duty to the public as much as to [the] defendant in determining a proper sentence." *State v. August*, 589 N.W.2d 740, 744 (Iowa 1999) (quoting *Hildebrand*, 280 N.W.2d at 396). In exercising its discretion, the district court is to weigh "and consider all pertinent matters in determining [a] proper sentence, including the nature of the offense, the attending circumstances, the defendant's age, character and propensities and chances [for] reform. . . . The punishment should fit both the crime and the individual." *State v. Leckington*, 713 N.W.2d

208, 216 (Iowa 2006); see also Iowa Code § 907.5(1) (listing factors the court is to consider, including the “age of the defendant”). “[B]efore deferring judgment . . . , the court must additionally consider the defendant’s prior record of convictions or deferred judgments, employment status, family circumstances, and any other relevant factors, as well as which of the sentencing options would satisfy the societal goals of sentencing.” *State v. Formaro*, 638 N.W.2d 720, 725 (Iowa 2002); see also Iowa Code § 907.5.

As noted above, age is a legitimate factor for the court’s consideration when determining whether or not to defer judgment. Iowa Code § 907.5(1)(a). Brown asserts her age was the *only* factor the court considered in denying her request for a deferred judgment. We disagree.

To be sure, the court emphasized Brown’s age in rejecting her request, but it also considered other factors. The court reviewed the presentence investigation report, which reported Brown did not “have much in the way of a prior criminal history,” but, as noted by the court, she did have one prior forgery conviction. The court also noted Brown’s life experiences of having a family and financial crises. Further, the court remarked upon the nature of the crime, stating it “was a scheme” and there was a significant “amount of money involved here.” The court explained that all of this “worked against a deferred judgment” in this case. So, the court’s decision to deny Brown a deferred judgment was not solely based upon Brown’s age.

We are aware “the sentencing process can be especially demanding and requires trial judges to detail, usually extemporaneously, the specific reasons for imposing the sentence.” *State v. Thomas*, 520 N.W.2d 311, 313 (Iowa Ct. App.

1994); see also Iowa R. Crim. P. 2.23(3)(d). Fulfilling this requirement can, at times, result in misconstrued remarks. *Thomas*, 520 N.W.2d at 314. As an appellate court, we know the record only documents verbal expression and may lack context for a court's statements. See *id.* Here, we take the district court's comments regarding Brown's age as another way of saying Brown was a mature adult and that her criminal act was not just some youthful indiscretion that might have warranted some leniency. Brown was a mature adult with many life experiences, and she acknowledged she "knew better."

Brown intimates the district court articulated a fixed policy of not granting deferred judgments to persons other than younger defendants. We do not construe the record that way. Although the district court noted that if Brown was "twenty, twenty-five years younger and . . . had no criminal record, [the court] would be tempted to give [her] a deferred judgment," the statement is a far cry from an announced fixed policy of denying older defendants deferred judgments.

Upon our review, we find the reasons given by the sentencing court comport with the pertinent statute and case law. Although Brown was employed, taking care of her grandchildren, and did not have much in the way of a criminal history, we cannot conclude the district court's decision was unreasonable or based on untenable grounds. Accordingly, we affirm Brown's judgment and sentence.

AFFIRMED.