

**IN THE COURT OF APPEALS OF IOWA**

No. 3-484 / 12-2118  
Filed May 30, 2013

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**JOSHUA DAVID BEYER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Butler County, Peter B. Newell,  
District Associate Judge.

Joshua David Beyer appeals from judgment and sentences entered upon  
his convictions of three counts of criminal mischief in the second degree.

**AFFIRMED.**

Ethan D. Epley of Stumme & Epley Law Office, P.L.L.C., Denver, for  
appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney  
General, and Gregory M. Lievens, County Attorney, for appellee.

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

**DANILSON, J.**

Joshua David Beyer appeals from judgment and sentences imposed upon his convictions of three counts of criminal mischief in the second degree, in violation of Iowa Code sections 716.2 and 716.4 (2011). He asserts the district court abused its discretion in sentencing him to three five-year prison sentences to run concurrent with one another for a total indeterminate sentence of five years. He also maintains that review of such discretion is impracticable since the district court violated Iowa Rule of Criminal Procedure 2.23(3)(d) by failing to state adequate reason on the record for the chosen sentence. He asks that we remand for resentencing. We find the district court did provide adequate reasons to allow a review and that the district court did not abuse its discretion. We affirm.

**I. Background Facts.**

Beyer was charged with three counts of criminal mischief in the second degree for defacing an LP tank, destroying office equipment within a hog confinement building, and purposely crashing a backhoe into a semi-tractor. He voluntarily pled guilty. At the time he entered his guilty plea in Butler County, Beyer was on probation for similar acts in other counties.

At the sentencing hearing, the State and the defendant recommended the same sentence: concurrent five-year terms of imprisonment, to be suspended. The district court rejected the recommendation and instead sentenced Beyer to concurrent indeterminate terms of incarceration, not to exceed five years on each count. Beyer then filed a timely notice of appeal.

## II. Standard of Review.

We review a district court's sentencing decision for correction of errors at law. Iowa R. App. P. 6.907; *State v. Rodriguez*, 804 N.W.2d 844, 848 (Iowa 2011). Absent an abuse of discretion or defect in the sentencing procedure, the sentence imposed by the district court will not be disturbed. *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). An abuse of discretion will only be found when such discretion was "exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Neary*, 470 N.W.2d 27, 29 (Iowa 1991). In criminal cases the court is to "state on the record its reasons for selecting the particular sentence." Iowa R. Crim. P. 2.23(3)(d). We review both the court's stated reasons made at the sentencing hearing and its written sentencing order. See *State v. Lumadue*, 622 N.W.2d 302, 304 (Iowa 2001). The statement of reasons can be "terse and succinct," as long as its brevity does not hinder review of the district court's discretion. *State v. Victor*, 310 N.W.2d 201, 205 (Iowa 1981).

## III. Discussion.

Beyer asserts we are precluded from reviewing the district court's exercise of discretion because the court failed to provide adequate statements on the record regarding its chosen sentence. We disagree. As our supreme court has noted, sentencing courts need to provide "rationale relating to *this* offense, and *this* defendant's background." *State v. Johnson*, 445 N.W.2d 337, 342-43 (Iowa 1989). A court has provided adequate statement for our review when it "recites reasons sufficient to demonstrate the exercise of discretion and indicates those

concerns which motivated the court to select the particular sentence which it imposed.” *State v. Garrow*, 480 N.W.2d 256, 259-60 (Iowa 1992). The district court’s sentencing record here contains both.

At the sentencing hearing the court emphasized that there were “three separate acts” committed simply because Beyer was “just bored.” The court characterized the acts as “senseless” and “malicious,” and noted there was “no profit” in partaking in them. After recounting that Beyer was “no stranger to the court system” and had been given parole in the past but continued to commit offenses, the court concluded the recommended probation was not adequate.

In support of his assertion that the district court did not properly exercise its discretion, Beyer compares his case to *State v. Taggart*, 525 N.W.2d 877 (Iowa Ct. App. 1994). In *Taggart*, the court stated that Iowa Code section 901.5<sup>1</sup> imposes an affirmative duty upon a sentencing court to exercise its discretion so as to “provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant.” 525 N.W.2d at 882. In that case, the sentencing court provided only one general statement to explain its reasoning for the chosen sentence: “Granting of probation in this matter is denied because it is unwarranted to protect the public from further criminal activity by the defendant and would unduly lessen the seriousness of the offenses.” *Id.* The appellate court found this statement spoke only to probation and not the imposed sentence; nothing in the record illustrated

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<sup>1</sup> While the *Taggart* court was referring to the 1995 Iowa Code, there has been no substantive change between the 1995 version and the 2011 version (the code in force when the action arose).

why the chosen sentence was needed to accomplish the rehabilitation of the defendant and the protection of the community. *Id.* Because the court failed to state adequate reasons as required by section 901.5, the case was remanded for resentencing. *Id.*

The case before us does not evidence the same flaws as those found in *Taggart*. In the written sentencing order, the court affirmatively stated the sentence was “for the protection of society” and “the rehabilitation of the Defendant.” This statement is buttressed by the explanation the court provided at the sentencing hearing. The court highlighted specific factors relating to the actions of the defendant and the defendant’s background that informed its decision: that the acts were “senseless” and motivated by “just boredom,” that there were multiple acts, that the defendant was “no stranger to the court system,” and that the defendant had been shown leniency with probation before and had continued to commit offenses. These reasons adequately explained why the court rejected the recommendation of probation.

We find the district court did provide adequate reasons on the record, and no abuse of discretion is shown. We affirm.

**AFFIRMED.**