

IN THE COURT OF APPEALS OF IOWA

No. 3-528 / 12-2121

Filed July 10, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MONTAVIOUS KENTRELL SMITH,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James D. Coil,
District Associate Judge.

A defendant appeals his sentence for operating a motor vehicle while
intoxicated. **AFFIRMED.**

Christopher M. Soppe, Dubuque, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney
General, Thomas J. Ferguson, County Attorney, and Jeremy Westendorf,
Assistant County Attorney, for appellee.

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

MULLINS, J.

Montavious Kentrell Smith appeals from the sentence following his guilty pleas and convictions for two separate charges of operating while intoxicated, first offense, in violation of Iowa Code section 321J.2 (2011). Smith contends that the district court erred in failing to provide specific reasons for the sentence imposed. For the reasons stated below, we affirm the decision of the district court.

I. BACKGROUND FACTS AND PROCEEDINGS.

In May 2011, Smith was arrested for operating while intoxicated (OWI) after a traffic stop and was charged by trial information in June 2011. On October 13, 2011, he executed and filed a written guilty plea and waiver of rights in that case, and in the space provided on the form for disclosing his understanding of the State's anticipated sentence recommendation "N/A" was written. The court acknowledged the written guilty plea in a December 6, 2011 order following a bond forfeiture hearing.

On November 30, 2011, Smith was again arrested for OWI and charged by trial information on December 7. On August 3, 2012, he executed a written guilty plea and waiver of rights for the subsequent offense, and the court held a hearing accepting the written guilty plea. The parties informed the court at the hearing, and it specifically stated in the written guilty plea, there was no plea agreement at that time.

The district court held a plea and sentencing hearing on November 7, 2012. With regard to the first OWI offense, the State recommended the following

sentence: one year incarceration with all but thirty days suspended, a \$1250 fine plus costs and surcharges, completion of drinking drivers classes, a substance abuse evaluation and evidence of compliance with any recommendations, two years supervised probation, and placement in the Black Hawk County Residential Facility for one year or until the attainment of maximum benefits. With regard to the subsequent OWI offense, the State recommended an identical sentence to run concurrently with the first. The State informed the court that additional pending charges, some of which were in cases that are not included in this appeal, either were resolved by pleas or were going to be dismissed by the State. The State further recommended the sentences run concurrent with sentences to be imposed in two of those other cases in which Smith was pleading guilty as outlined in a written plea that was apparently filed in those cases. The State also informed the court of Smith's history of prior criminal convictions.

Pointing out that Smith should receive credit for the thirty non-suspended days of the sentence for time already served, defense counsel said, "[T]hat would be the only change I would make with regards to the plea agreement." When given his right of allocution, Smith questioned whether the court should consider his prior criminal record but did not object to the State's sentencing recommendation or his counsel's remarks concerning sentencing.

The district court accepted the pleas and jointly recommended sentences, and ordered the two sentences to run concurrently. As a condition of Smith's probation, the court ordered Smith placed in the residential facility for one year or

until attainment of maximum benefits.¹ The court stated the following as its reasons for the sentences imposed: “the nature and circumstances of these offenses, you as an offender, your prior criminal record as well as the plea agreement of the parties.” Smith now appeals, arguing that the district court erred in failing to state specific reasons for the sentences on the record.

II. SCOPE AND STANDARD OF REVIEW.

The scope of our review of sentencing decisions is for correction of errors at law. Iowa R. App. P. 6.907; *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). The standard of our review is for an abuse of discretion or some defect in the sentencing procedure. *Formaro*, 638 N.W.2d at 724. The district court abuses its discretion only when the reasons for its decision are “clearly untenable or unreasonable.” *State v. Bentley*, 757 N.W.2d 257, 262 (Iowa 2008). A strong presumption exists in favor of the district court’s sentencing decisions, and it is the appellant’s burden to overcome this burden with a showing of an abuse of discretion. See *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995).

III. DISCUSSION.

The district court in a criminal case is required to make a statement on the record of its reasons for imposing a particular sentence. Iowa R. Crim. P. 2.23(3)(d).² Even if the statement is terse and succinct, it nonetheless may be

¹ The court also sentenced Smith for two other offenses not a part of this appeal. As to one of those other offenses, the court referenced a written plea which provided for a consecutive sentence, to which the State replied that it was changing its recommendation to concurrent.

² This requirement may be satisfied by placing the reasons in the sentencing order, as the order is a part of the record. *State v. Johnson*, 445 N.W.2d 337, 342–43 (Iowa 1989).

sufficient, “so long as the brevity of the court’s statement does not prevent review of the exercise of the trial court’s sentencing discretion.” *State v. Hennings*, 791 N.W.2d 828, 838 (Iowa 2010) (quoting *Johnson*, 445 N.W.2d at 343); see also Iowa Code § 901.5 (mandating an exercise of discretion by sentencing court). “A sentencing court’s statement of its reasons satisfies the rule if 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 (Iowa 1992). Among the well-established factors relevant to the sentencing decision are the nature of the offense, the attendant circumstances, and the defendant’s age, character, propensities, and chances for reform. *State v. August*, 589 N.W.2d 740, 744 (Iowa 1999).

The requirement of a statement of reasons serves two related interests: (1) it reveals to criminal defendants their right, rooted in fundamental notions of due process, to be informed of the consequences of their criminal acts; and (2) it affords appellate courts the opportunity to review the discretionary nature of a sentencing court’s decisions regarding those consequences. See *State v. Alloway*, 707 N.W.2d 582, 584 (Iowa 2006), *overruled on other grounds by State v. Johnson*, 784 N.W.2d 192 (Iowa 2010). By statute, a sentencing court must determine which among the prescribed sentencing options is authorized by law and must exercise its discretion to determine which possible sentence or combination sentences will best accomplish the rehabilitation of the offender and the protection of the community. Iowa Code § 901.5. By rule, the court is required to provide on the record the reasons for the particular sentence

imposed. Iowa R. Crim. P. 2.23(3)(d). Together these provisions serve as a mechanism to ensure due process in the sentencing of criminal defendants and to provide a record for appellate review of that process.

These procedures also demonstrate the functional allocation of power between the three branches of government. In prescribing the punishment or range of punishments for a crime, the legislature exercises its inherent constitutional power. *State v. Iowa Dist. Ct. for Shelby Cnty.*, 308 N.W.2d 27, 30 (Iowa 1981). The legislature has vested the executive branch, through the office of the prosecutor, with the authority to plea bargain, and the prosecution has discretion as to what charges to bring. *See id.* Subject to the statutorily prescribed limitations, “the actual sentencing of a defendant is an independent function that is the sole province of the judiciary.” *State v. Iowa Dist. Ct. for Black Hawk Cnty.*, 616 N.W.2d 575, 578 (Iowa 2000). The court, then, has the authority and responsibility to decide whether to accept or reject a plea agreement reached by the prosecution and the defendant. *Iowa Dist. Ct. for Shelby Cnty.*, 308 N.W.2d at 30.

Our supreme court has held that where a plea agreement is outlined to the court and the court agrees to be bound by the agreement and incorporates the terms of the agreement in its sentence, the sentence is not a product of the court’s discretion but merely an effectuation of the parties’ agreement. *State v. Snyder*, 336 N.W.2d 728, 729 (Iowa 1983) (finding the court had agreed to be bound by the plea agreement under Iowa Rule of Criminal Procedure 9.2–.3 (now renumbered as Iowa Rule of Criminal Procedure 2.10(2)–(3))). In a case in

which the terms of the plea agreement were announced to the court prior to the entry of the guilty plea and the defendant indicated to the court that it understood and agreed with the State's sentencing recommendations, the supreme court relied on *Snyder* and determined the district court did not abuse its discretion when it sentenced the defendant pursuant to the plea agreement and recited no other reasons. *State v. Cason*, 532 N.W.2d 755, 756 (Iowa 1995).

In cases such as *Snyder* and *Cason*, where the defendant, defense counsel, and the county attorney negotiate a plea agreement within the parameters of Iowa Code section 901.5, timely disclose the agreement to the court pursuant to rule 2.10(2),³ and the court accepts that agreement, the defendant is clearly informed of the consequences of his actions, and the record discloses an explanation for imposing the particular sentence. See *Snyder*, 336 N.W.2d at 729 (finding that when the court approves a plea agreement and incorporated it into the sentence, the sentence was not the product of the exercise of the court's discretion but was giving effect to the parties' agreement). Thus, the requirement that a court give a statement of reasons for the sentence is inapposite,⁴ and we find, therefore, the statutory requirement that the court exercise its discretion is deemed satisfied.

³ Rule 2.10(2) provides in part: "If a plea agreement has been reached by the parties the court shall require the disclosure of the agreement in open court at the time the plea is offered." The open court requirement can be satisfied by disclosure in a written guilty plea when a written plea is authorized.

⁴ *Snyder* makes it clear that even if there is a plea agreement that has been accepted by the court, the better practice is for the court to state its reasons for the sentence in every case, even when it has no discretion. 336 N.W.2d at 729. We again endorse this direction.

In the present case, however, Smith's written guilty pleas tendered to the court affirmatively disavowed any agreement as to sentencing recommendations. The requirement to disclose any existing plea agreement at the time of the entry of the guilty plea is an express requirement of rule 2.10(2). This requirement was satisfied in *Snyder* and *Cason*. We find nothing in *Snyder* and *Cason* that supports a conclusion that section 901.5 and rule 2.23(3)(d) may be avoided in cases where the terms of a plea agreement only become clear as counsel are making their sentencing recommendations to the court at the sentencing hearing. Accordingly, in such a case a sentencing court must satisfy the discretion requirement of section 901.5 and the reasons requirement of rule 2.23.

Nonetheless, we believe the court's declaration of acceptance of a late-disclosed plea agreement or a joint recommendation for sentence is among the appropriate factors we may consider to determine whether a court has satisfied the discretion requirement of section 901.5 and the reasons requirement of rule 2.23. See *State v. Weig*, 285 N.W.2d 19, 21 (Iowa 1979) (finding "accused persons bargain for sentencing recommendations from the State because such recommendations may, and frequently do, influence [the] trial court in fixing the sentence"). In this case the district court did take care to summarize its reasons for the sentencing decision on the record. Specifically, the court stated at the sentencing hearing that the sentences were based on the nature and circumstances of the offenses, the defendant's characteristics, the defendant's prior criminal record, and the parties' plea agreement and jointly recommended sentences. Further, the sentencing order for each case reveals that the court

specifically identified the following reasons that it deemed each sentence appropriate: “based on the plea agreement of the parties[,] due to the nature and circumstances of the offense[, and] defendant’s prior record.”

Upon our review of the verbatim record and the written record, we conclude the district court exercised its discretion and adequately stated its reasons when it sentenced Smith.

AFFIRMED.