

IN THE COURT OF APPEALS OF IOWA

No. 3-585 / 12-2042
Filed July 10, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOHNNIE L. HAYWOOD-PARKER,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Joel W. Barrows,
Judge.

Johnnie Haywood-Parker appeals his sentence for possession with intent
to deliver marijuana. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, Shellie L. Knipfer, Assistant
Appellate Defender, and Jason M. Groth, Legal Intern, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney
General, Michael J. Walton, County Attorney, and Joseph A. Grubisich, Assistant
County Attorney, for appellee.

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

DANILSON, J.

Johnnie Haywood-Parker appeals the sentence imposed upon his guilty plea to possession with intent to deliver marijuana, in violation of Iowa Code section 124.401(1)(d) (2011). He contends the district court abused its discretion by failing to consider all relevant factors when it denied his request for a deferred judgment. He also contends the district court abused its discretion by engaging in a fixed sentencing policy. He asks that we vacate his sentence and remand for resentencing. Because we conclude the district court considered relevant factors and did not abuse its discretion, we affirm.

I. Background and Proceedings.

Haywood-Parker was charged by trial information with possession with intent to deliver marijuana and failure to affix a drug tax stamp, in violation of Iowa Code section 453B.12 (Count II). He agreed to plead guilty to the possession-with-intent charge. In exchange the State agreed to dismiss the drug tax stamp charge and to recommend against incarceration at sentencing. The district court accepted the plea, finding it was made voluntarily and with a factual basis.

At a later hearing the district court sentenced Haywood-Parker to a prison term of not more than five years and ordered him to pay a fine of \$750. The term of incarceration and the fine were both suspended. Haywood-Parker was placed on probation for two years. The court denied Haywood-Parker's request for a deferred judgment. He appeals.

During the sentencing hearing the district court stated, “Well, Mr. Hayward-Parker, honestly, I don’t think you’re a good candidate for a deferred, primarily due to your history and your age. I think you’re kind of beyond that stage. But I certainly agree with the State that you don’t need to be incarcerated at this time.” After imposing the sentence the court further stated, “I’m doing this because of the age of the defendant, his criminal history, the need for his reform and rehabilitation, and because of the recommendation in the presentence investigation report.” The presentence investigation report stated, “Probation supervision is recommended.”

II. Standard of Review.

Our review is for correction of errors at law. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). The decision to impose a sentence within statutory limits is “cloaked with a strong presumption in its favor.” *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). The sentence will not be upset on appeal “unless the defendant demonstrates an abuse of trial court discretion or a defect in the sentencing procedure.” *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000). 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. *Thomas*, 547 N.W.2d at 225.

III. Discussion.

On appeal Haywood-Parker contends the district court erred in denying his request for a deferred judgment. He argues the court improperly focused on his age and history, and did not consider the minimal essential factors. He

further argues the court abused its discretion by engaging in a fixed sentencing policy.

Haywood-Parker argues the court abused its discretion because it considered only his age and criminal history when determining his sentence. “In exercising its discretion, the district court is to weigh all pertinent matters in determining a proper sentence, including the nature of the offense, the attending circumstances, the defendant’s age, character, and propensities or chances for reform.” *State v. Johnson*, 513 N.W.2d 717, 719 (Iowa 1994). In this case the court stated that Haywood-Parker was not a “good candidate for a deferred [judgment], primarily due to [his] age and history.” However, nothing on the record shows these were the only two factors considered. By stating that the “primary” reasons were Haywood-Parker’s age and criminal history, the court implied that other reasons were also considered in the determination. In fact, the court later reiterated its point and added, “I’m doing this because of the age of this defendant, his criminal history, the need for his reform and rehabilitation, and because of the recommendation in the presentence investigation report.” While “a sentencing court has a duty to consider all the circumstances of a particular case,” it is not “required to specifically acknowledge each claim of mitigation urged by a defendant.” *State v. Boltz*, 542 N.W.2d 9, 11 (Iowa Ct. App. 1995). Furthermore, “the failure to acknowledge a particular sentencing circumstance does not necessarily mean it was not considered.” *Id.*

Haywood-Parker also argues the district court abused its discretion by placing too much focus on his criminal history when denying his request for

deferred judgment. In doing so, he relies on *Johnson*, 513 N.W.2d at 719. In *Johnson*, the court found that it was within the district court's discretion to incarcerate the defendant rather than grant probation after noting she had one prior felony conviction, eighteen prior misdemeanors, and had been granted, and failed to complete, probation six times previously. 513 N.W.2d at 719. Haywood-Parker compares his own criminal history to Johnson's and determines that because of the disparity,¹ the district court's use of it as one of the determining factors was improper. This argument is without merit. In *Johnson*, the court held that the sentencing court's consideration of the defendant's criminal history in determining the appropriate sentence was within its discretion. *Id.* Furthermore, the court did not suggest that the situation in *Johnson* was a close call or that any less-extensive history was improper to consider. *See id.*

Finally, Haywood-Parker argues that the district court's statements regarding the denial of his deferred judgment request show the court engaged in a fixed sentencing policy rather than appropriately exercising its discretion. In making his argument, he again relies on the court's statements that his request was denied "primarily due to [his] age and history." The sentencing court must exercise its discretion "without application of a personal, inflexible policy relating to one consideration." *State v. Hildebrand*, 280 N.W.2d 393, 397 (Iowa 1979). We would agree with Haywood-Parker if the court had said the request for a deferred judgment was denied solely because of his age. However, here, the

¹ At the time of sentencing, Haywood-Parker had been convicted of four prior misdemeanors and had been granted probation one time. His probation was terminated early for failure to comply with the terms.

record does not suggest that Haywood-Parker's age and criminal history were an "attending circumstance which triggered the court's previously-fixed sentencing policy." See *Hildebrand*, 280 N.W.2d at 396. As required, the court "engage[d] in an independent consideration [of the] case." *State v. Hager*, 630 N.W.2d 828, 834 (Iowa 2001). We reach this conclusion because the court referenced both the defendant's age and his criminal history, as well as using the qualifier "primarily."

We find the district court did not abuse its discretion when rejecting Haywood-Parker's request for a deferred judgment. We affirm.

AFFIRMED.