

**IN THE COURT OF APPEALS OF IOWA**

No. 3-937 / 12-2127  
Filed December 5, 2013

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

**vs.**

**BRIAN JAY TIGNER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg,  
Judge.

Defendant challenges the court's sentencing order. **AFFIRMED.**

James S. Nelsen, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant  
Attorney General, John P. Sarcone, County Attorney, and David Porter, Assistant  
County Attorney, for appellee.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

**BOWER, J.**

Brian Tigner appeals the prison sentence imposed following his *Alford* plea<sup>1</sup> to assault with intent to inflict serious injury. See Iowa Code §§ 708.1(1), 708.2(1) (2011). We affirm.

**I. Background Facts and Proceedings.**

On January 1, 2012, Tigner was involved in a melee at his jointly-owned business, Capital Pub and Hot Dog Company. Tigner and co-defendant Scott Patrick Adamson were both charged, after amendment, with two counts of willful injury (Count I victim—Justin Lancaster, Count II victim—Tom Ramirez). Pursuant to a September plea agreement, Tigner entered an *Alford* plea on Count II to the lesser-included offense of assault with intent to inflict serious injury. The court accepted the plea and ordered the preparation of a presentence investigation report (PSI). Under the plea agreement, the State agreed to dismiss all other counts at sentencing.

The PSI discussed, in separate paragraphs, the victim impact statements of Lancaster and Ramirez. Ramirez stated he was affected by injuries, medical care, medical expenses, missed work, “fear, depression, sleep problems, and concern for safety.” After noting thirty-seven-year-old Tigner is employed full time and living with his wife and children in a house he is purchasing, the PSI listed his prior criminal convictions: domestic assault causing injury, first-degree theft, conspiracy to distribute cocaine and marijuana (federal), possession with

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<sup>1</sup> An *Alford* plea allows a defendant to consent to the imposition of a prison sentence without admitting he committed the acts constituting the crime. *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

intent to deliver, assault causing injury, felon in possession of a firearm, four charges of driving while barred, and two charges of possession of controlled substance. The PSI also discussed the psychological assessment Tigner completed showing (1) immaturity, (2) a low aggression score (“may indicate a lack of awareness of feelings of anger and have been associated with episodic aggressive behavior”), and (3) a low social anxiety score (“may indicate callousness in interactions with others”). The PSI recommended imprisonment, a substance abuse evaluation, and payment of restitution, stating:

During the presentence investigation interview, [Tigner] admitted to his involvement in the assault but lacked accountability and leaned towards blaming the victims for patronizing his bar at a time when he felt there was an ongoing situation involving his brother. His actions and lack of judgment as bar owner resulted in this serious offense. [Tigner] has been given several opportunities in his lifetime for rehabilitation but continues to engage in criminal behavior.

At the November 2012 sentencing hearing, the State asked the court to order imprisonment. Ramirez testified the assault caused his trust in people to be altered, and “looking over my shoulder has become a daily occurrence.” He also stated his wife, family, and friends have been impacted “by this unfortunate act of violence . . . . The attack was unprovoked, unnecessary, and brutal.”

Defense counsel urged the court to impose a suspended sentence and probation. Tigner’s wife testified to Tigner’s actions upholding his family and business responsibilities. She acknowledged Tigner’s criminal record but asserted he has changed and improved in managing his anger. Further, she testified the Ramirez group refused to leave even though she asked them to leave three times. Specifically: “I feel that the [Ramirez group] came to our place

of business and were hostile and refused to leave, and I feel it was a very isolated incident and it was very personal because our family was involved.”

Tigner acknowledged his past “is not a great past” but “all I can do is move forward and grow.” He accepted full responsibility while having “extreme remorse for what happened to Tom Ramirez.”

Tigner’s sister also testified in support of the position that Tigner’s actions “were an attempt to defuse” the situation of “bad blood” between Ramirez and Tigner’s brother Scott. She claimed the situation was “brought to” Tigner’s business when Ramirez chose to come to Capitol Pub that evening.

Defense counsel showed the court the business’s video footage prior to the fight. Counsel argued the video shows Tigner to be festive, jovial, and joking with Ramirez until you see Ramirez “leaning in and Mr. Tigner’s demeanor changes,” establishing Tigner “was trying to protect his bar, trying to defuse the situation.” Counsel sought probation, arguing Tigner is “not denying he was in the wrong, but at the same time this incident got out of hand” and he seeks “punishment consistent with his role.”

At the conclusion of the hearing, the court sentenced Tigner to “a term of incarceration not to exceed two years.” This appeal followed.

## **II. Scope and Standards of Review.**

Sentencing decisions are cloaked with a strong presumption in their favor. *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000). When, as here, a sentence does not fall outside statutory limits, we will overturn the sentence only “for an abuse of discretion or the consideration of inappropriate factors.” *State v.*

*Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). Our “task on appeal is not to second guess the decision made by the district court, but to determine if it was unreasonable or based on untenable grounds.” *Id.* at 725. A sentence will not be upset on appeal unless the defendant demonstrates there is no support for the decision in the evidence. *State v. Valin*, 724 N.W.2d 440, 445 (Iowa 2006).

### **III. Discussion.**

Tigner seeks resentencing and first contends the court relied upon PSI information regarding Justin Lancaster’s injuries, a “related matter” that he “had not been convicted of causing.” We find no merit to this claim. At the start of the sentencing hearing, defense counsel objected to the portion of the PSI report referring to Justin Lancaster, noting Lancaster “is the victim in the associated count” and “not the victim in this particular matter.” After the State agreed with defense counsel, the court ordered the Lancaster portion “deleted from the PSI” and expressly stated the deleted portion “will not be considered by the court.” Therefore, the record rebuts Tigner’s claim the court improperly considered information about an offense for which he was not convicted.

Second, Tigner argues the district court abused its discretion in “failing to consider [his] actual role in the offense” and “the mitigating circumstances.”

A trial court’s explanation for selecting a particular sentence “does not need to be detailed,” but must provide enough “to permit review of the trial court’s discretionary action.” *State v. Delaney*, 526 N.W.2d 170, 178 (Iowa Ct. App. 1994). A “sentencing court has a duty to consider all the circumstances of a particular case,” but the court is not required “to specifically acknowledge each

claim of mitigation argued by a defendant.” *State v. Boltz*, 542 N.W.2d 9, 11 (Iowa Ct. App. 1995). “Instead, we review a sentence for an abuse of discretion based on the entire record, and look to see if the reasons articulated by the trial court are sufficient to enable us to determine if an abuse of discretion occurred.” *Id.*

The district court noted the PSI report recommended imprisonment and stated: “Tigner has a lengthy criminal history, from at least 1993, several charges, some involving violence.” Also: “The court has considered the circumstances, the age, character, propensity of the defendant for further criminal activity. The court believes that probation would not provide reasonable protection of the public and [this sentence] is necessary to prevent further criminal activity by the defendant noting his long criminal history.”

The State argues the court’s specific statement of consideration of the “circumstances” logically encompasses Tigner’s “role” in the offense and any “mitigating circumstances.” We agree, and conclude Tigner has failed to show the court exercised its discretion “on grounds which are clearly untenable or to an extent clearly unreasonable.” *See id.* Accordingly, we affirm.

**AFFIRMED.**