

**IN THE COURT OF APPEALS OF IOWA**

No. 6-326 / 05-1560

Filed August 9, 2006

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

**vs.**

**HEROLD DANIEL SMITH,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, K.D. Briner and Jon Fister, Judges.

Defendant-appellant, Herold Daniel Smith, appeals the sentence imposed for his conviction for third-offense domestic abuse assault causing bodily injury as a habitual offender. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Greta Truman, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney General, and Thomas J. Ferguson, County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

**SACKETT, C.J.**

Defendant-appellant, Herold Daniel Smith, was convicted of third-offense domestic abuse assault causing bodily injury as a habitual offender. He appeals the sentence for the crime. Defendant argues that the sentence of a term of imprisonment not to exceed fifteen years for his crime is cruel and unusual punishment in violation of his constitutional rights. We affirm.

**I. BACKGROUND FACTS AND PROCEEDINGS.**

Defendant was convicted, following a bench trial, of third-offense domestic abuse assault causing bodily injury as a habitual offender, a class D felony, in violation Iowa Code sections 708.2A(4), 902.8 and 902.9(3) (2003). Defendant repeatedly punched his girlfriend, with whom he lived, in the face while she was driving. The victim fled on foot, but defendant caught her and continued to assault her. The police were called to the scene. The victim informed the officers of the assault. The officers requested a warrant for defendant's arrest. The victim went to the hospital where doctors reported she had sustained "a possible broken nose, possible broken right hand, bruises to both eyes, and a bruise to her upper right forehead."

Defendant had twice previously been convicted of domestic abuse assault. Therefore, defendant was charged with third offense domestic abuse causing bodily injury as a habitual offender. Defendant moved to dismiss the habitual offender enhancement as cruel and unusual punishment. The motion was denied. Defendant was convicted and sentenced to a term of imprisonment not to exceed fifteen years. Defendant appeals, arguing the sentence imposed violated the prohibition of cruel and unusual punishment found in the Eighth

Amendment to the United States and article I, section 17 of the Iowa Constitution.

## **II. SCOPE OF REVIEW.**

We review constitutional issues de novo. *State v. Kukowski*, 704 N.W.2d 687, 690 (Iowa 2005).

## **III. ANALYSIS.**

Punishment for a crime may be deemed cruel and unusual where it inflicts torture, is otherwise barbaric, or is so excessively severe it is disproportionate to the offense charged. *State v. Cronkhite*, 613 N.W.2d 664, 669 (Iowa 2000) (citing *State v. Lara*, 580 N.W.2d 783, 784-85 (Iowa 1998)). Generally, a sentence that falls within statutorily prescribed parameters does not constitute cruel and unusual punishment, as we afford the legislature substantial deference in establishing criminal penalties. *Id.* Nonetheless, it is the role of the courts to determine whether the term of imprisonment imposed is “grossly disproportionate” to the crime charged. *Id.* If it is not, no further analysis is necessary. *Id.* Defendant argues that his sentence of up to fifteen years incarceration is grossly disproportionate to the convicted crime—domestic abuse assault causing bodily injury.

We begin our analysis with applying an objective test “measuring the harshness of the penalty against the gravity of the offense.” *State v. Seering*, 701 N.W.2d 655, 670 (Iowa 2005). We believe the threshold comparison in the present case reveals that the fifteen-year sentence is in appropriate proportion with the crime and, thus, is not cruel and unusual punishment.

First, we note that defendant committed an egregiously violent offense against another person. Defendant repeatedly punched his victim in the face. When the victim sought to escape the assault, defendant chased her down and continued to assault her. The victim sustained substantial injuries from the assault.

Defendant argues that certain offenses, that he deems more heinous than the one he committed, are punished by lesser sentences. *See State v. Newell*, 710 N.W.2d 6, 30 (Iowa 2006). The threshold comparison we are to make is “whether the term of imprisonment imposed is grossly disproportionate to the *crime charged*.” *Cronkhite*, 613 N.W.2d at 669. Defendant acknowledges the crime with which he was charged and convicted was violation of Iowa Code section 708.2A(4). *Third-offense* domestic abuse assault is the crime embodied in that statutory provision.

The severity of the punishment for third-offense domestic abuse assault causing bodily injury and whether that offense should be more harshly punished than a first offense for sexual abuse is the type of decision within the discretion of the legislature. *See Solem v. Helm*, 463 U.S. 277, 290, 103 S. Ct. 3001, 3009, 77 L. Ed. 2d 637, 649 (1983); *Seering*, 701 N.W.2d at 670; *Cronkhite*, 613 N.W.2d at 669; *Lara*, 580 N.W.2d at 785. The legislature has spoken on the issue and its decision to allow third-offense domestic abuse assault causing bodily injury to be punished by up to fifteen years incarceration is not unfairly harsh or disproportionate to the crime.

**AFFIRMED.**

Miller, J., concurs specially.

**MILLER, J.** (concur specially)

I concur in the result.