

**IN THE COURT OF APPEALS OF IOWA**

No. 6-346 / 05-1129  
Filed June 28, 2006

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

**vs.**

**JASON WILLIAM BRYANT,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Cerro Gordo County, Jon Stuart  
Scoles, Judge.

Defendant appeals his sentences for his convictions for second-degree  
and third-degree theft. **AFFIRMED.**

Edward W. Bjornstad of Bjornstad Law Office, Spirit Lake, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney  
General, Paul L. Martin, County Attorney, and Carlyle D. Dalen, Assistant County  
Attorney, for appellee.

Considered by Mahan, P.J., and Hecht, J., and Hendrickson, S.J.\*

\*Senior Judge assigned by order pursuant to Iowa Code section 602.9206  
(2005).

**HENDRICKSON, S.J.*****I. Background Facts & Proceedings***

On March 10, 2005, Jason Bryant was charged with two counts of forgery. On April 21, 2005, he was charged with one count of theft in the second degree. The State alleged Bryant had written eighteen checks to Wal-Mart, one to College Book Store, and one to Hy-Vee, knowing his checking account was closed. Bryant entered into a plea agreement. He pled guilty to one count of theft in the second degree, and one count of theft in the third degree. Bryant was on parole on similar offenses in Emmet County at the time of the present offenses.

At the sentencing hearing, Bryant's attorney made certain oral corrections to the information included in the Pre-Sentencing Investigation (PSI). The court sentenced Bryant to a term of imprisonment not to exceed five years on the second-degree theft charge, and a term not to exceed two years on the third-degree theft charge, to be served concurrently, but consecutively to the earlier conviction in Emmet County. Bryant appeals his sentences.

***II. Standard of Review***

We review sentencing challenges for errors at law. Iowa R. App. P. 6.4; *State v. Liddell*, 672 N.W.2d 805, 815 (Iowa 2003). A sentence will not be reversed unless there has been an abuse of discretion or a defect in the sentencing procedure. *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2000).

### **III. Merits**

Bryant contends the district court considered improper factors in rendering his sentences. He believes the court considered uncharged, unproven offenses, which are not permitted reasons for imposing a sentence. See *State v. Pappas*, 337 N.W.2d 490, 494 (Iowa 1983). At the sentencing hearing, Bryant's counsel told the court that Bryant had turned eighteen in November 1999, and that some offenses listed under his juvenile record were actually part of his adult record.

In imposing sentence, the court stated:

I've also reviewed the pre-sentence investigation report. As you know, you have a lengthy record of writing bad checks. Back – apparently just before you reached your majority, you were convicted of – I haven't added them up – maybe 20 different convictions for theft in the fifth degree.

Then after you became an adult . . . you continued to write bad checks and continued to obtain convictions for theft in the fifth degree.

Bryant asserts that he did not have twenty convictions as a juvenile. He contends the court's statements show the court did not consider his corrections to the PSI, and that the court improperly counted these twenty previous convictions for fifth-degree theft twice, once under his juvenile record and once under his adult record.

We note the PSI listed Bryant's birthday as being in November 1982, and that at the guilty plea hearing in May 2005, Bryant stated he was twenty-two years old, which would agree with his birthday being in November 1982. If Bryant were born in November 1982, he would have turned eighteen in November 2000. The PSI does show about twenty convictions for fifth-degree

theft which occurred before November 2000, and about nine which occurred after that date.

Even if Bryant had turned eighteen in November 1999, and most of his convictions occurred as an adult instead of a juvenile, this does not change the fact that the district court properly considered Bryant's criminal history, and the fact that he had many previous convictions for theft. The district court's statements do not support Bryant's supposition that the court improperly considered his convictions twice. At most, the court considered some of them as adult convictions when they were juvenile convictions.

The district court did not abuse its discretion in giving the sentences in this case. Bryant had a lengthy history of theft by check. Also, Bryant was on parole for similar charges at the time the present charge arose. There was ample justification for the sentences imposed by the district court. Bryant failed to make an affirmative showing that the district court relied on uncharged offenses. See *State v. Ashley*, 462 N.W.2d 279, 282 (Iowa 1990). We affirm Bryant's sentences.

**AFFIRMED.**