

IN THE COURT OF APPEALS OF IOWA

No. 6-369 / 05-1141
Filed May 24, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SHELLY KAYE SHANEYFELT,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, J. Hobart Darbyshire,
Judge.

Shelly Shaneyfelt appeals her sentence for neglect or abandonment of a
dependent person. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglas, Assistant Attorney
General, William E. Davis, County Attorney, and Julie Walton, Assistant County
Attorney, for appellee.

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

HUITINK, J.

Shelly Shaneyfelt appeals her sentence for neglect or abandonment of a dependent person in violation of Iowa Code section 726.3 (2003).

I. Background Facts and Proceedings.

On April 21, 2003, Shaneyfelt was charged with child endangerment resulting in serious injury in violation of Iowa Code section 726.6(4) and neglect or abandonment of a dependent person in violation of section 726.3. These charges resulted from the serious injuries Thaddeus Bonnicksen suffered while in Shaneyfelt's care. Shaneyfelt was a licensed day care provider. On the morning of March 13, 2003, three-month-old Thaddeus was left in Shaneyfelt's care while his parents went to work. That day Thaddeus received serious injuries including subdural hematomas, bilateral retinal hemorrhages, and severe bruising on his torso, knees, and back of the head. These injuries are consistent with shaken-baby syndrome. Thaddeus spent twenty-five days in the hospital and endured nine procedures whereby the doctors inserted a needle to drain the excess fluid putting pressure on his brain.

Pursuant to a plea agreement, Shaneyfelt pleaded guilty to neglect of a dependent person. The child endangerment charge was dismissed. In Shaneyfelt's factual basis, which was provided to the court in the presentence report, Shaneyfelt blamed the injuries to Thaddeus on another child in her day care. At her sentencing on March 25, 2004, Judge J. Hobart Darbyshire imposed an indeterminate maximum term not to exceed ten years' imprisonment. Shaneyfelt appealed this sentence, and this court reversed and remanded for resentencing, holding that the sentencing court impermissibly considered

Shaneyfelt's failed polygraph exam. *State v. Shaneyfelt*, No. 04-0481 (Iowa Ct. App. Feb. 24, 2005). Shaneyfelt was resentenced on July 11, 2005, to an indeterminate term not to exceed ten years' imprisonment.

On appeal, Shaneyfelt argues the following:

- I. The district court again considered an improper sentencing factor, serious injury, an element of the dropped charge.
- II. Judge Darbyshire should have disqualified himself from re-sentencing.

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 upset on appellate review unless the defendant demonstrates an abuse of trial court discretion or a defect in the sentencing procedure, such as trial court consideration of impermissible factors." *Liddell*, 672 N.W.2d at 815. "[S]o long as the sentence is within the statutory maximum we will not reverse absent an abuse of discretion." *State v. Floyd*, 466 N.W.2d 919, 924 (Iowa Ct. App. 1990) (quoting *State v. Buck*, 275 N.W.2d 194, 195 (Iowa 1979)). Accordingly, a defendant must show "discretion was exercised on grounds clearly untenable or to an extent clearly unreasonable." *Id.*

III. Merits.

"A sentencing court may consider unprosecuted offenses in imposing sentences only if admitted by the defendant or adequate facts are presented at the sentencing hearing to show the defendant committed the crimes." *State v. Delaney*, 526 N.W.2d 170, 179 (Iowa Ct. App. 1994) (citing *State v. Black*, 324 N.W.2d 313, 316 (Iowa 1982)). Iowa Code section 901.3(5) requires the

presentence investigator to inquire into the “harm to the victim” and allows the presentence investigation to include the victim impact statements. “[T]he punishment must fit the particular person and circumstances under consideration; each decision must be made on an individual basis, and no single factor, including the nature of the offense will be solely determinative.” *State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979) (citing *State v. McKeever*, 276 N.W.2d 385, 387 (Iowa 1979)).

At sentencing, the judge made the following statement:

Ms. Shaneyfelt, I’m absolutely sure if we go back to the date of March 13, 2003, and before this event occurred, that no one would want to repeat it, absolutely. The fact remains, though, that regardless of what you’ve done since that time in terms of being crime free, in terms of being steadily employed, in terms of mental health treatment, which are all wonderful things for you to do, on that date what you have admitted to doing is the neglect or abandonment of a dependent person, perhaps one of the most serious things that a person can encounter doing, and certainly in the eyes of the legislature. It carries a very serious connotation. I’ve looked at the presentence again. I’ve read the letters from your employer, and I’m impressed that you’ve been able to literally pull yourself out of this event. Nonetheless, the fact remains that in your care someone else’s child was seriously injured because of your failure. And having reviewed the entire matter again, and considering all permissible factors the Court is allowed to consider, the Court still feels that the recommendation by the presentence investigation is not an appropriate recommendation and that incarceration is merited.

Shaneyfelt argues that the judge improperly considered the fact that the child was “seriously injured.” As previously stated by this court, it is “abundantly clear that the district court is permitted to consider the extent of the injury suffered by the infant in determining the appropriate sentence.” *State v. Shaneyfelt*, No. 04-0481 (Iowa Ct. App. Feb. 24, 2005). The extent of injuries is “relevant to the nature of the hazard or danger to which Shaneyfelt exposed a dependent person

in her custody.” *Id.* The district court’s use of the term “seriously injured” summarizes the fact that the victim spent twenty-five days in the hospital and underwent several procedures to reduce the pressure on his brain. Accordingly, we find the district court did not abuse its discretion, and we affirm on this issue.

Shaneyfelt argues that Judge Darbyshire should have disqualified himself because he was the judge in Shaneyfelt’s March 25, 2004 sentencing. The State maintains Shaneyfelt failed to preserve error on this issue. Error preservation “requires that issues must be presented to and passed upon by the district court before they can be raised and decided on appeal.” *Metz v. Amoco Oil Co.*, 581 N.W.2d 597, 600 (Iowa 1998). We will not consider an error raised for the first time on appeal, “even if it is of constitutional dimension.” *State v. Webb*, 516 N.W.2d 824, 828 (Iowa 1994). There are some exceptions to error preservation. If the sentence is illegal or void, the error need not be preserved and may be raised for the first time on appeal. *State v. Ceasar*, 585 N.W.2d 192, 195 (Iowa 1998). An illegal or void sentence results from the trial court stepping outside of the “codified boundaries of allowable sentencing.” *Id.* We may also review unpreserved error where the failure to preserve error is attributable to ineffective assistance of counsel. *State v. Ramirez*, 597 N.W.2d 795, 797 (Iowa 1999).

Shaneyfelt failed to state in her brief how error was preserved. See Iowa R. App. P. 6.14(1)(f) (requiring appellant’s brief to state how each issue was preserved for review). There is neither a motion for recusal nor an objection to Judge Darbyshire as the sentencing judge. Shaneyfelt has not provided any reason why she did not preserve error on this issue. Additionally, Shaneyfelt’s sentence does not fall within the exception to the error preservation rule.

Shaneyfelt was sentenced within the codified boundaries of allowable sentencing. Therefore, we consider this issue waived. See *State v. Rodriguez*, 636 N.W.2d 234, 246 (Iowa 2001).

AFFIRMED.