

IN THE COURT OF APPEALS OF IOWA

No. 6-451 / 05-1106

Filed June 28, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANDREW EMMETT JOHANSEN,
Defendant-Appellant.

Appeal from the Iowa District Court for Carroll County, Gary L. McMinimee and Joel E. Swanson, Judges.

Defendant appeals his sentence for delivery of controlled substance to a minor. **SENTENCE VACATED, REMANDED FOR RESENTENCING.**

Linda Del Gallo, State Appellate Defender, and Martha Lucey, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Ann Brenden, Assistant Attorney General, John Werden, Jr., County Attorney, and James R. Van Dyke, Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Hecht and Eisenhauer, JJ.

EISENHAUER, J.

Andrew Emmett Johansen appeals from the sentence entered upon his guilty plea for delivery of a controlled substance to a minor. Johansen asserts the district court erred in failing to exercise discretion in the imposition of his sentence and erred in revoking his driving privileges. A sentence within statutory limits is reviewed for an abuse of discretion. *State v. Cooley*, 587 N.W.2d 752, 754 (Iowa 1998). However, where the sentence is beyond the court's authority, we review for errors at law. *Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001).

Johansen pleaded guilty to delivery of a controlled substance to a minor under Iowa Code section 124.406 (2005), in exchange for related charges being dismissed. The court accepted Johansen's plea and he was sentenced to a twenty-five year indeterminate term with a five-year minimum. The district court also revoked Johansen's driver's license pursuant to section 901.5(10).

The written plea bargain itself contained a misstatement of law because it stated that delivery of a controlled substance carried a five-year minimum prison term. See Iowa Code § 907.3 (plea for violation under section 124.406 is subject to deferred judgment, deferred sentence or suspended sentence). Throughout the plea and sentencing proceedings it appears counsel and the court assumed a prison sentence was mandatory. Johansen does not assert his plea is invalid under Iowa Rule of Criminal Procedure 2.8(2)(b), but only prays that we vacate his sentence and remand for resentencing. Because the sentencing court failed to consider all sentencing options, we vacate Johansen's sentence and remand for resentencing.

Johansen also contends that because he was convicted under section 124.406, his driver's license should not have been revoked pursuant to section 901.5(10). Section 901.5(10) requires revocation if a defendant is being sentenced for a controlled substance offense under specific statutes; however, it does not include a violation of section 124.406. The district court stated that it revoked Johansen's license because "it appear[ed]" that Johansen had been "charged with a violation of 124.401." Johansen was clearly convicted under section 124.406. We vacate the order of revocation.

SENTENCE VACATED, REMANDED FOR RESENTENCING.