

**IN THE COURT OF APPEALS OF IOWA**

No. 6-460 / 05-1781  
Filed July 12, 2006

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

vs.

**DMITRIY ANDREW SERYKH,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Mark J. Smith,  
Judge.

Serykh appeals his sentence for possession with intent to deliver  
psilocybin and possession with intent to deliver marijuana. **AFFIRMED.**

Murray Bell of Murray W. Bell, P.C., Davenport, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney  
General, William E. Davis, County Attorney, and Robert Cusack, Assistant  
County Attorney, for appellee.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

**VAITHESWARAN, J.**

Dmitriy Andrew Serykh pled guilty to one count of possession with intent to deliver psilocybin and one count of possession with intent to deliver marijuana. Iowa Code §§124.401(1)(c), (d), 124.204(4) (2003). At sentencing, Serykh asked for a deferred judgment. The State made no recommendation on this request.

The district court sentenced Serykh to indeterminate prison terms and the payment of fines, but suspended these sentences, subject to successful completion of probation. On appeal, Serykh contends the court abused its discretion in refusing to grant him a deferred judgment rather than a suspended sentence. *State v. Cooley*, 587 N.W.2d 752, 754 (Iowa 1998) (setting forth standard of review when challenged sentence falls within statutory limits).

Prior to sentencing Serykh, the district court provided a detailed explanation for choosing probation over a deferred judgment. The court stated:

Well, Mr. Serykh, I've looked at your history. You were charged and found guilty of retail theft in 1999. You had a felony theft conviction in Johnson County, Kansas, in 2001, and then you have this charge which is currently pending in which you possessed 225 grams of cannabis and 142 grams of psilocybin mushrooms. I can tell you that many judges in this district would not give you probation let alone a deferred judgment. They would – given the volume of the marijuana and the psilocybin that you had in your possession at the time and the fact that you were going to deliver those substances to other people for their use would indicate that you should be incarcerated.

However, given your history and the fact that you do have some positive things going for you – I think you are an intelligent person that would offer something in return to the community. You are employed. You have shown some acumen for academics, which is a good thing, and you appear to be able to do the things that are necessary for you to make a contribution to this community, and given that, I am willing to place you on probation,

but I'm not willing to give you a deferred judgment given your criminal history and the volume of drugs that you had in your possession at the time of your arrest.

This transcription belies Serykh's first assertion that the court did not consider "all pertinent factors." See Iowa Code § 907.5; *State v. Formaro*, 638 N.W.2d 720, 724-25 (Iowa 2002) (setting forth sentencing factors). The court acknowledged receipt of the presentence investigation (PSI), which contained information about Serykh's age, education, employment history and family circumstances. See *State v. Sumpter*, 438 N.W.2d 6, 7 (Iowa 1989) (stating sentencing court "presumably considered" information in PSI). The court also weighed Serykh's criminal history and the seriousness of his current offenses against the fact he was employed and was furthering his education. This was all the court was required to do. Iowa Code § 907.5.

Serykh's second assertion is premised on the court's reference to what other district court judges might do. He contends this amounted to an improper sentencing factor.

"We will not draw an inference of improper sentencing considerations which are not apparent in the record." *Formaro*, 638 N.W.2d at 725. Here, the district court simply suggested that other judges might not even have granted probation under the circumstances of this case. The court went on to exercise its discretion based on pertinent factors. We discern nothing improper or illegal in this reference. Cf. *State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979) ("The court is not permitted to arbitrarily establish a fixed policy to govern every case, as that is the exact antithesis of discretion.")

We affirm Serykh's judgment and sentence.

**AFFIRMED.**