

**IN THE COURT OF APPEALS OF IOWA**

No. 6-502 / 05-2003

Filed July 26, 2006

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

**vs.**

**JUAN CARLOS AYALA,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Story County, Thomas R. Hronek,  
Judge.

Defendant-appellant, Juan Carlos Ayala, appeals the sentence imposed  
upon him for the offense of assault with the intent to commit sexual abuse.

**AFFIRMED.**

Daniel Gonnerman, Ames, for appellant.

Thomas J. Miller, Attorney General, Sheryl Soich, Assistant Attorney  
General, Stephen H. Holmes, County Attorney, and Mary Howell Sirna, Assistant  
County Attorney, for appellee.

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

**SACKETT, C.J.**

Defendant-appellant, Juan Carlos Ayala, appeals the sentence imposed upon him for the offense of assault with the intent to commit sexual abuse, in violation of Iowa Code 709.11 (2005). He contends the district court considered improper factors in sentencing him. We affirm.

Ayala was initially charged with sexual abuse in the third degree, in violation of sections 709.1 and 709.4(2)(c)(4). He pled to the reduced charge. The State recommended a two-year prison term. Ayala requested probation. The district court imposed a two-year prison term as a part of Ayala's sentence.

Ayala's position is that the district court considered the original charge in sentencing him. In support of his argument he points to two statements taken from the statements made by the district court in announcing its reasons for the sentence.

First, Ayala points to the fact that the district court said the commitment to the custody of the Director of the Division of Corrections is wholly appropriate to "inform Mr. Ayala and others who are similarly situated of the clear intention of the community to provide protection for victims of possible sexual abuse, particularly minor children. . . ."

Secondly, he points to where in the record the district court said, "Juan Carlos Ayala is guilty of the offense of sexual abuse in the third degree—excuse me, assault with the intent to commit sexual abuse. . . ."

The decision of the district court to impose a particular sentence within the statutory limits is cloaked with a strong presumption in its favor, and will only be overturned for an abuse of discretion or the consideration of inappropriate

matters. *State v. Pappas*, 337 N.W.2d 490, 494 (Iowa 1983). An abuse of discretion will not be found unless we are able to discern that the decision was exercised on grounds or for reasons that were clearly untenable or unreasonable. *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995).

The societal goals of sentencing criminal offenders focus on rehabilitation of the offender and the protection of the community from further offenses. See Iowa Code § 901.5. A sentencing court may not rely upon additional, unproven, and unprosecuted charges unless the defendant admits to the charges or there are facts presented to show the defendant committed the offenses. *State v. Formaro*, 638 N.W.2d 720, 725 (Iowa 2002), *State v. Black*, 324 N.W.2d 313, 315-16 (Iowa 1982). If a district court improperly considers unprosecuted and unproven additional charges, we will remand the case for resentencing. *Black*, 324 N.W.2d at 315.

The district court's first comment referencing the protection of "victims of possible sexual abuse, particularly minor children" was appropriate here where the victim was a fourteen-year-old girl and Ayala in a written plea of guilty noted, "I committed an assault with the intent to commit sexual abuse, and no injury resulted."

The district court's second challenged comment was not a reliance on an unproven charge or charges; it was no more than a misstatement and the judge immediately corrected himself. The rigors of the trial process and the intensity of the moment may result in comments which greater deliberation would reject. *State v. Thomas*, 520 N.W.2d 311, 313 (Iowa Ct. App. 1994). The performance of this judicial duty can produce "unfortunate phraseology" and unintended or

misconstrued remarks. *Id.* at 313-14. Ayala has failed to show that the judge in sentencing him relied on unproven charges. The incorrect statement which the judge quickly corrected was no more than a misstatement. We affirm.

**AFFIRMED.**