

**IN THE COURT OF APPEALS OF IOWA**

No. 6-758 / 06-0484  
Filed October 25, 2006

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

**vs.**

**ALVARO V. DOZAL,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,  
Judge.

Alvaro Dozal appeals from the sentence entered on his two convictions of  
third-degree sexual abuse. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shellie L. Knipfer,  
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney  
General, William E. Davis, County Attorney, Robert Cusack, Assistant County  
Attorney and Robert Weinberg, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vaitheswaran, J., and Robinson, S.J.\*

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

**SACKETT, C.J.**

Alvaro Dozal appeals the sentence imposed following his conviction of two counts of third-degree sexual abuse in violation of Iowa Code section 709.4 (2005). He contends the district court considered improper factors in sentencing him. We affirm.

Dozal was initially charged by trial information with two counts of second-degree sexual abuse. Pursuant to a plea agreement, the State amended its trial information to include an additional two counts of third-degree sexual abuse. Dozal pled guilty to two charges of third-degree sexual abuse. The other charges were dismissed. The district court sentenced Dozal to a term of imprisonment not to exceed ten years and a \$1,000 fine on each count. The court ordered the sentences to be served consecutively.

In sentencing him, Dozal contends the district court improperly considered unproven charges of sexual abuse. Specifically, he claims that when ordering his sentences to run consecutively, the court relied on allegations in the Presentence Investigation Report (PSI) of multiple acts of sexual abuse from 1998 through 2002. To support his argument, he points to comments made by the court during sentencing noting “multiple occasions” of sexual abuse and referring to him as a “pedophile.”

The State contends the trial court’s statements alluded specifically to the two offenses to which Dozal pled guilty. It asserts that Dozal did not object to a reference of pedophile or other information contained in the PSI. The State did not indicate where these references were made in the PSI, and we do not find them.

We review a sentence imposed by the district court for correction of errors at law. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). We will only overturn the district court for abuse of discretion or the consideration of improper factors in sentencing. *State v. Pappas*, 337 N.W.2d 490, 494 (Iowa 1983) (citing *State v. Gartin*, 271 N.W.2d 902, 910 (Iowa 1978)). If the district court relied on improper factors, we will remand the case for resentencing. *State v. Black*, 324 N.W.2d 313, 315 (Iowa 1982).

A sentencing court may not rely upon unproven or unprosecuted charges unless the facts show the defendant committed the offenses or the defendant admits to them. *State v. Witham*, 583 N.W.2d 677, 678 (Iowa 1998). It is the defendant's burden to affirmatively show the court relied upon the unproven offenses. *State v. Jose*, 636 N.W.2d 38, 41 (Iowa 2001); *State v. Sailer*, 587 N.W.2d 756, 762 (Iowa 1998). Dozal points to the statements made by the court at his sentencing hearing referring to "multiple occasions" of victimization and "repeated sexual abuse" and defining him as a "pedophile" as evidence that the court relied on unproven charges.

There was no error in the court's statements referring to "multiple occasions" of victimization and "repeated sexual abuse." Dozal pled guilty to two counts that charged him with committing third-degree sexual abuse dating between 1998 and 2003. Nor was there error in referring to Dozal as a pedophile. Black's Law Dictionary defines "pedophile" as "an adult who engages in pedophilia," and "pedophilia" is defined as "an adult act of child molestation." BLACK'S LAW DICTIONARY 1167 (8th ed. 2004). The record before the trial court clearly supports a finding that Dozal was a pedophile.

Furthermore, the district court may consider any portion of the PSI not challenged by the defendant when determining an appropriate sentence. *State v. Grandberry*, 619 N.W.2d 399, 402 (Iowa Ct. App. 2000). The official statement in the PSI indicates a history of sexual abuse committed by Dozal over a four-year period. Dozal did not challenge the accuracy of any portion of the PSI; in fact, his own statement admits the sexual abuse. This constitutes “sufficient facts” from which the district court could consider the other abuse allegations. See *State v. Witham*, 583 N.W.2d 677, 678 (Iowa 1998) (finding the unchallenged PSI mental history portion “constituted sufficient facts from which the sentencing court could consider the defendant’s prior sexual abuse”). Thus, even if the district court relied on the allegations in the PSI, it was justified in doing so.

**AFFIRMED.**