

**IN THE COURT OF APPEALS OF IOWA**

No. 7-142 / 06-0842  
Filed March 28, 2007

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

**vs.**

**TIFFANY MARIE FINCH,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Jasper County, Darrell J. Goodhue,  
Judge.

Tiffany Finch appeals sentencing because she was not given the  
opportunity to speak regarding her punishment. **SENTENCE VACATED AND  
REMANDED FOR RESENTENCING.**

Patricia Reynolds, Acting State Appellate Defender, and Martha Lucey,  
Assistant State Appellate Defender, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bridget Chambers, Assistant Attorney  
General, Steve Johnson, County Attorney, and Michael K. Jacobsen, Assistant  
County Attorney, for appellee.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

**BAKER, J.**

Tiffany Finch asserts that the trial court abused its discretion in failing to allow her to exercise her right to allocution. Because Finch was not given the opportunity to speak regarding her punishment, we vacate her sentence and remand for resentencing.

**I. Background and Facts**

On February 15, 2005, the State charged Tiffany Finch with delivery of a schedule I controlled substance, marijuana, in violation of Iowa Code section 124.401(1)(d) (2005) and possession of a schedule I controlled substance, marijuana, in violation of Iowa Code section 124.401(5). Finch entered a guilty plea to delivery of marijuana. The trial court granted Finch a deferred judgment, and she was placed on three years of probation.

On May 1, 2006, at a hearing on reported violations of the terms of her probation, Finch stipulated that she had violated the conditions of her deferred judgment. The trial court revoked Finch's deferred judgment and sentenced Finch to pay a fine and to serve an indeterminate five-year term of imprisonment. The trial court suspended the prison sentence and ordered Finch to complete two years of probation and reside at the Women's Residential Facility in Des Moines "until maximum benefits are obtained." Finch appeals.

**II. Merits**

Appellant asserts that review of sentencing procedures is for an abuse of discretion. *State v. Duckworth*, 597 N.W. 2d 799, 800 (Iowa 1999). Abuse of discretion will only be found where the trial court's discretion was exercised on clearly untenable or unreasonable grounds. *State v. Craig*, 562 N.W.2d 633, 634

(Iowa 1997). In determining the proper standard of review, however, we focus on the nature of the claimed error. On appeal, our review of a court's application of a sentencing statute is for the correction of errors at law. *State v. Beach*, 630 N.W.2d 598, 600 (Iowa 2001). We employ a substantial compliance standard in determining whether a trial court has discharged its duty under the rules. *State v. Straw*, 709 N.W.2d 128, 132 (Iowa 2006). Illegal sentences are not subject to the usual requirements of error preservation. *State v. Haliburton*, 539 N.W.2d 339, 343 (Iowa 1995).

Finch asserts that the trial court abused its discretion in failing to allow her to exercise her right to allocution. She seeks a remand for resentencing to allow her to exercise her right to allocution.

Prior to pronouncing judgment, the defendant must be allowed to address the sentencing court to make a statement in mitigation of punishment. Iowa R. Crim. P. 2.23(3)(d). The opportunity to address the court does not have to be couched in the precise words of the statute. *State v. Patterson*, 161 N.W.2d 736, 738 (Iowa 1968). “The important thing is whether defendant had his chance to point out any reason for withholding judgment.” *Id.* Therefore, as long as the trial court provides the defendant with an opportunity to speak regarding her punishment, the court is in compliance with the rule. *Craig*, 562 N.W.2d at 635 (citing *State v. Christiansen*, 201 N.W.2d 457, 460 (Iowa 1972)). The defendant's right to make a statement in mitigation of punishment applies when a sentence is entered after a probation revocation. See *Duckworth*, 597 N.W.2d at 800 (quoting *State v. Lillibridge*, 519 N.W.2d 82, 83 (Iowa 1994) (“[T]he entry of a sentence after a probation revocation is ‘the final judgment in the criminal

case' . . . . Accordingly, a district court must comply with the rules of criminal procedure when imposing a sentence after revoking probation.”).

At the probation revocation and sentencing hearing, the trial court did not specifically inquire whether Finch was in agreement with the sentencing recommendation or whether she wished to speak in mitigation of her punishment. The State does not contest the claim that the trial court failed to afford Finch her right of allocution. The State asserts, however, that error was harmless in light of the fact that the trial court merely imposed the sentence that had been agreed upon by the parties.

Finch asserts that the error was not harmless because, although the attorneys expressed an agreement regarding the sentencing disposition, Finch was never asked if the agreement was correct or whether she agreed with the recommendation. Finch further contends that, because the trial court was free to impose any legal sentence, Finch's statements of allocution were an important consideration in determining the appropriate sentence.

In *State v. Cason*, 532 N.W.2d 755 (Iowa 1995), the defendant and defense counsel “affirmatively stated that they agreed to the recommendation of sentence proposed by the State,” and the trial court asked the defendant on several occasions whether he had any questions regarding his plea agreement or the sentencing recommendations, and the defendant had several opportunities to state any objections to the proposed sentence at that time. The Iowa Supreme Court held that, under those circumstances, the failure by the trial court to formally afford the defendant his right to allocution was harmless error. *Cason*, 532 N.W.2d at 757.

This case is distinguishable from *Cason*. *Id.* At the probation revocation and sentencing hearing, the trial court's three questions to Finch were limited to whether she admitted to the probation violations and an additional criminal violation. The trial court did not inquire whether Finch was in agreement with the sentencing recommendation, whether she wished to speak in mitigation of her punishment, or whether she had any questions regarding her plea agreement. The trial court's colloquy with the defendant was insufficient to allow Finch to "point out any reason for withholding judgment." *Patterson*, 161 N.W.2d at 738. The trial court's failure to afford Finch her right to allocution was reversible error.

Trial judges should leave no room for doubt that a defendant has been given the opportunity to speak regarding punishment. *Craig*, 562 N.W.2d at 637. Because the trial court's failure to give Finch an opportunity to speak regarding her punishment was not harmless error, we vacate her sentence and remand for resentencing.

**SENTENCE VACATED AND REMANDED FOR RESENTENCING.**