IN THE COURT OF APPEALS OF IOWA

No. 7-317 / 06-0536
Filed August 8, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JEDEDIAH LEE JENNINGS,
Defendant-Appellant.

Appeal from the Iowa District Court for Jefferson County, Daniel P. Wilson, Judge.

Jedediah Jennings appeals from the sentence imposed by the district court following his convictions for delivery of marijuana within 1,000 feet of a public park and delivery of marijuana. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, Martha J. Lucey, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, and Timothy W. Dille, County Attorney, for appellee.

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

MILLER, J.

Jedediah Jennings appeals from the sentence imposed by the district court following his convictions for delivery of marijuana within 1,000 feet of a public park and delivery of marijuana. He contends the court abused its discretion by failing to state reasons for imposing the five-year sentencing enhancement permitted by Iowa Code section 124.401A (2001). We affirm.

After Jennings sold marijuana to a confidential informant in July and August 2002, the State charged him with delivery of marijuana within 1,000 feet of a public park, in violation of Iowa Code section 124.401(1)(d) with sentencing enhancement pursuant to section 124.401A (Count I), and delivery of marijuana, in violation of section 124.401(1)(d) (Count II). The case proceeded to jury trial in July 2003 and the jury found defendant guilty as charged. The court imposed suspended sentences and placed him on probation for three years.

Jennings appealed his convictions to the Iowa Supreme Court. The State moved to reverse the convictions, conceding error in the entrapment jury instruction. The supreme court reversed the convictions and remanded the case to the district court for further proceedings.

On retrial Jennings waived jury trial and withdrew his entrapment defense. The parties stipulated that the hotel where one of the controlled buys took place was 275 feet from a public park for purposes of section 124.401A. The district court found Jennings guilty of delivery of marijuana within 1,000 feet of a public park and delivery of marijuana. The court sentenced Jennings to a term of incarceration of no more than five years on each count, and imposed an

additional five-year term under the sentencing enhancement provided for in section 124.401A for delivery of marijuana within 1,000 feet of a public park. The court suspended the sentences and placed Jennings on probation for three years with several special conditions, including residing at a residential facility for 180 days or until maximum benefits were obtained.

Jennings appeals, contending the district court abused its discretion by failing to state sufficient reasons for imposing the additional five-year term of incarceration under the sentencing enhancement provided for in section 124.401A.

We note the State argues this issue is not ripe for our consideration because the court suspended the enhanced sentence and placed Jennings on probation for three years. Thus, the State contends the sentence to be reviewed is the sentence of probation and not the sentence that was suspended. The State argues there is no guarantee Jennings will ever have to serve the enhanced sentence because he may not violate his probation, and even if he does violate that would not automatically result in the imposition of the enhanced sentence. However, for the following reasons we conclude the district court did give sufficient reasons for the imposition of the enhanced sentence and thus we need not address the State's ripeness argument.

Our scope of review of sentencing decisions is for correction of errors at law. Iowa R. App. P. 6.4; *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). We review for an abuse of discretion or for defects in the sentencing procedure. *State v. Cason*, 532 N.W.2d 755, 756 (Iowa 1995). A sentence will not be upset

on appeal unless the defendant demonstrates an abuse of trial court discretion or a defect in the sentencing procedure. *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000); *State v. Gonzalez*, 582 N.W.2d 515, 516 (Iowa 1998).

> Sentencing decisions of the district court are cloaked with a strong presumption in their favor. Where, as here, a defendant does not assert that the imposed sentence is outside the statutory limits, the sentence will be set aside only for an abuse of discretion. An abuse of discretion is found only when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable.

Thomas, 547 N.W.2d at 225 (citations omitted).

> When a sentence is not mandatory, the district court must exercise its discretion in determining what sentence to impose. The district court must demonstrate its exercise of discretion by stating upon the record the reasons for the particular sentence imposed. The sentencing court, however, is generally not required to give its reasons for rejecting particular sentencing options.

Id. (citations omitted).

> In applying discretion, the court "should weigh and consider all pertinent matters in determining proper sentence, including the nature of the offense, the attending circumstances, defendant's age, character and propensities and chances of his reform. The courts owe a duty to the public as much as to defendant in determining a proper sentence. The punishment should fit both the crime and the individual."

State v. August, 589 N.W.2d 740, 744 (Iowa 1999) (quoting *State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979)).

Iowa Rule of Criminal Procedure 2.23(3)(*d*) requires a sentencing court to "state on the record its reason for selecting the particular sentence." Failure to state on the record the reasons for the sentence imposed requires the sentence be vacated and the case remanded for amplification of the record and resentencing. *State v. Marti*, 290 N.W.2d 570, 589 (Iowa 1980); *State v.*

Freeman, 404 N.W.2d 188, 191 (Iowa Ct. App. 1987). In considering sentencing options the court is to determine, in its discretion, which of the authorized sentences will provide maximum opportunity for the rehabilitation of the defendant and for the protection of the community from further offenses by the defendant and others. Iowa Code § 901.5.

The court stated the following in support its imposition of sentence:

> There are several reasons that I imposed this sentence. Mr. Jennings. I considered the nature of this offense and considered all the information in the PSI report. I considered your prior criminal record, and having heard the evidence at the trial, I considered all of that information, considered the recommendations of counsel, and your statements to me here today.
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> I have considered your attitude in connection with this proceeding. I have considered the fact that you have apparently made yourself available for the hearing that you are required to do. Also you were not apparently any problem with your supervising officer during what has become a very lengthy period here since about 2002. And hopefully that bodes well for you.
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> I have considered your age, employment, family, education, and other background and circumstances.

Most all of the reasons given by the trial court refer to documents, recommendations, and other information without identifying particular facts, specific to this case, upon which it relied in deciding to impose the sentencing enhancement. Trial court identification of case-specific facts and reasons for sentencing decisions will in most cases avoid claims on appeal that the statement of reasons is inadequate, and in cases in which such claims are raised will greatly facilitate appellate review. We nevertheless believe that from a review of items to which the trial court referred we are able to discern its reasons

for imposition of the sentencing enhancement allowed for in section 124.401A and are thus able to review its exercise of sentencing discretion in this case.

Specifically, the court noted it was taking into account the nature of the offense, the recommendations of counsel, and all of the information in the presentence investigation (PSI) report. The information in the PSI report included the fact Jennings had a lengthy record of criminal convictions, including a prior burglary conviction for which he was granted probation, later had probation revoked, and was imprisoned. The PSI report also noted that Jennings felt he had "been done kind of wrong on this case" which demonstrates an unwillingness to take responsibility for his actions in this matter. In addition, the PSI report included information on Jennings's age, employment history, family dynamics, and education, all of which the court also specifically stated it took into account in determining his sentence.

From the district court's statement of reasons it readily appears the court found and considered two significant but countervailing factors. It noted and considered Jennings's good behavior and lack of any problems during the period of some three and one-half years the case had been pending, and apparently believed he stood a good chance of succeeding on probation if granted a suspended sentence. However, it also noted and considered his prior criminal record, including the felony burglary conviction and failed probation, and apparently believed that if he were to again fail on probation the crimes on which he was being sentenced would fully justify imposition of the sentencing enhancement provided for by section 124.401A.

Accordingly, we conclude the district court's statements on the record at the time of the sentencing hearing adequately explain its overall sentencing plan, including its decision to impose the sentencing enhancement. They are thus sufficient to allow appellate review of the trial court's discretionary act of ordering imposition of the sentencing enhancement permitted by section 124.401A. *See e.g. State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989) (holding that where the statement of reasons is sufficient to determine that the district court ordered consecutive sentences as part of an overall sentencing plan the record is sufficient to review the exercise of the trial court's sentencing discretion); *State v. Delany,* 526 N.W.2d 170, 178 (Iowa Ct. App. 1994) (same). We therefore affirm the sentence imposed by the district court.

AFFIRMED.