

IN THE COURT OF APPEALS OF IOWA

No. 7-536 / 06-0794
Filed February 13, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JEANA KAY BLAGG,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchinson,
Judge.

The defendant appeals from her sentence after she pled guilty to forgery.

SENTENCE AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

Brandon Brown, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney
General, John P. Sarcone, County Attorney, and Jeffrey Noble, Assistant County
Attorney, for appellee.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

VOGEL, J.

Jeana Blagg pled guilty to three counts of forgery and received a deferred judgment. Blagg contends that the district court erred by imposing a civil penalty for each count. Because we conclude that the district court was required to impose the penalty for each count, but that the district court did have discretion to suspend the penalty, we affirm in part, vacate in part, and remand.

In February 2006, the State charged Blagg with six counts of forgery in violation of Iowa Code sections 715A.2(1)(c) and 715A.2(2)(a)(3) (2005). Pursuant to a plea agreement, Blagg pled guilty to three counts of forgery and requested a deferred judgment and the State dismissed the remaining three counts. On May 3, 2006, the district court granted Blagg's request for a deferred judgment, placed Blagg on supervised probation for two years, and ordered her to pay a civil penalty of seven hundred and fifty dollars for each of the three counts to which she pled guilty. During sentencing, Blagg argued that the district court could only impose one civil penalty of seven hundred and fifty dollars for "one deferred judgment." She also argued the district court had discretion to suspend the penalty. The district court concluded that under Iowa Code section 907.14 (Supp. 2005), it was required to impose a civil penalty for each count and it did not have discretion to suspend the penalty. Blagg was granted discretionary review by our supreme court and the case was transferred to this court. Iowa Code § 814.6; see also *State v. Stessman*, 460 N.W.2d 461, 462 (Iowa 1990) (stating a deferred judgment is not a final judgment and is not appealable as a matter of right).

We review a sentence imposed in a criminal case for correction of errors at law. Iowa R. App. P. 6.4; *State v. Freeman*, 705 N.W.2d 286, 287 (Iowa 2005). A sentence will not be disturbed on appeal unless the defendant shows the district court abused its discretion or there was a defect in the sentencing procedure. *State v. Sandifer*, 570 N.W.2d 256, 257 (Iowa Ct. App. 1997).

Blagg argues that the district court erred in finding that Iowa Code section 907.14 requires the imposition of a civil penalty for each offense to which she plead guilty. Iowa Code section 907.14 provides:

Upon the entry of a deferred judgment pursuant to section 907.3, a defendant shall be assessed a civil penalty of an amount not less than the amount of any criminal fine authorized by law for the offense under section 902.9 or section 903.1.

This section establishes that the minimum civil penalty a district court may impose is equal to the minimum amount of any criminal fine authorized by law. *State v. Nail*, ___ N.W.2d. ___, ___ (Iowa 2007) (stating that section 907.14(1) establishes a minimum civil penalty that must be imposed). In this case, the minimum amount of the criminal fine authorized by law for a forgery conviction under 715A.2(1)(c) and 715A.2(2)(a)(3) is seven hundred and fifty dollars. Iowa Code 902.9 (providing that a defendant sentenced for a class D felony shall be sentenced to a fine of at least seven hundred fifty dollars but not more than seven thousand five hundred dollars). Because Blagg plead guilty to three counts of forgery under 715A.2(1)(c) and 715A.2(2)(a)(3), each would support the imposition of the penalty. *State v. Ross*, 512 N.W.2d 830, 833 (Iowa Ct. App. 1993) (stating “that multiple violations of a single statute will support multiple convictions and punishments”). Therefore, we conclude that the district court

correctly determined it was required to impose a civil penalty for each count of forgery to which Blagg pled guilty.

Blagg further argues that the district court erred in finding it did not have discretion to suspend a civil penalty imposed under Iowa Code section 907.14.

Our supreme court recently examined Iowa Code section 907.14 and stated:

We also hold that because Iowa Code section 907.14 must be read in the context of our body of criminal law, the general sentencing provisions of criminal law in Iowa Code section 901.5 apply. That provision vests the district court with wide discretion in and general criteria for imposing sentences.

. . . .

In other words, the discretionary tools available to the district court in the imposition of a civil penalty pursuant to a deferred judgment under section 907.14 are coextensive with those of the court in imposing a criminal fine under section 901.5 because the civil money penalty under section 907.14(1) is imposed “pursuant to Iowa Code section 901.5.” Any civil penalty that is imposed under section 907.14 is thus subject to other provisions of the criminal code related to the imposition of fines.

Nail, ___ N.W.2d at ___.

The district court has discretion to suspend a fine when sentencing a criminal defendant under section 901.5; therefore, the district court also has discretion to suspend a civil penalty assessed when deferring judgment under section 907.14. *Id.* (discussing that sentencing discretion under 901.5 included suspension of a fine, ordering community service in lieu of a fine, and allowing payments to be made in installment). As the district court found it did not have discretion to suspend the civil penalty, we vacate this portion of the sentence and remand for limited resentencing. See *State v. Lee*, 561 N.W.2d 353, 355 (Iowa 1997) (reversing and remanding the fine portion of a sentence where the district court erroneously believed it did not have discretion regarding the imposition of a

fine). The resentencing is limited to allow the district court to exercise its discretion regarding the suspension of the civil penalties imposed.

SENTENCE AFFIRMED IN PART, VACATED IN PART, AND REMANDED.