IN THE COURT OF APPEALS OF IOWA

No. 7-642 / 06-1812
Filed September 19, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

NATHAN JOHN CARROLL,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, John A. Nahra, Judge.

Nathan John Carroll appeals his conviction and sentence following his guilty plea to possession with intent to deliver. **AFFIRMED.**

Russell Dircks, Davenport, and Kent Simmons, Davenport, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, William E. Davis, County Attorney, and Amy DeVine, Assistant County Attorney, for appellee.

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

BAKER, J.

Nathan Carroll appeals the conviction and sentence entered against him following his guilty plea to possession with intent to deliver in violation of Iowa Code section 124.401(5) (2005). He claims his trial counsel rendered ineffective assistance, and the district court abused its discretion by not granting him a deferred judgment. We affirm.

I. Background and Facts

On the night of February 26, 2006, three police officers responded to a call reporting an illegal drinking party at Cory Wulf's barn in LeClaire, Iowa. When the officers arrived, they heard loud music and knocked on the door of the barn but received no response. They encountered a couple outside, who the officers claimed invited them into the barn. Upon entering the barn, the officers observed juveniles drinking alcohol. Nathan Carroll tested 0.047 on a preliminary breath test. His parents were contacted, and he was given a citation for possession of alcohol under the legal age.

During their initial search, an officer noticed the smell of marijuana and saw a cigar filled with marijuana, i.e. a blunt, on the second floor of the barn. Wulf, who was brought into the barn and told about the marijuana, claimed to know nothing about it. According to Officer Rocco Marrari's report, he asked Wulf for his consent to search the barn, to which Wulf initially responded that he did not want him to search, but that he could anyway. Marrari reportedly advised Wulf that it was up to him, and Wulf told him to go ahead and search. In addition to the blunt, a baggie and brick of marijuana and other paraphernalia were later discovered. Wulf was arrested for the marijuana.

The next morning, Carroll turned himself in at the LeClaire Police Department.[1] He told an officer that the marijuana belonged to him. He claimed that he and several of his friends had pooled their money to buy the marijuana, and he had gone to get it. When the police arrived, he handed the marijuana to his girlfriend and told her to place it in the location where it had been found.

On July 19, 2006, Carroll was charged with possession with intent to deliver, in violation of Iowa Code sections 124.401(1)(d), 124.204(4)(m), and 703.1, and possession of drugs without a tax stamp, in violation of sections 453B.1(3)(b), 453B.7(1), 453B.12, and 703.1. On September 1, 2006, consistent with a plea agreement, Carroll pled guilty to possession with intent to deliver in violation of Iowa Code section 124.401(1)(d), and the tax stamp violation was dismissed. As part of the plea agreement, the State recommended against incarceration "recognizing the court may grant a deferred judgment." On October 5, 2006, Carroll was sentenced to a five-year term that was suspended and to a two-year term of probation. He appeals.

II. Ineffective Assistance of Counsel

Carroll contends his trial counsel rendered ineffective assistance by failing to file a motion to suppress evidence that was the fruit of an illegal search, by failing to challenge the sufficiency of the evidence, and by failing to adequately prepare Carroll and present the case for sentencing. A claim of ineffective assistance of counsel requires a de novo review because the claim is derived from the Sixth Amendment of the United States Constitution. *State v. Wills,* 696

[1] At the time of the party, Carroll was seventeen. He turned eighteen on May 5, 2006. Carroll was not charged in the matter until June 19, 2006.

N.W.2d 20, 22 (Iowa 2005). When an ineffective assistance claim is raised on direct appeal, "the court may decide the record is adequate to decide the claim or may choose to preserve the claim for determination" under postconviction relief procedures. Iowa Code § 814.7(3).

> Although we prefer to address ineffectiveness of counsel claims in postconviction proceedings where counsel has an opportunity to respond, we may resolve them on direct appeal if . . . "the record is clear and plausible strategy and tactical considerations do not explain counsel's actions."

State v. Neuzil, 589 N.W.2d 708, 710-11 (Iowa 1999) (quoting *State v. Hopkins*, 576 N.W.2d 374, 378 (Iowa 1998)). Because the trial record is often inadequate to allow us to resolve the claims, we frequently preserve ineffective assistance claims for possible postconviction proceedings to enable a complete record to be developed. *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004). Here, we find the record is adequate to resolve Carroll's claims.

The State contends that Carroll waived his claim that his counsel was ineffective for failing to file a motion to suppress and failing to challenge the sufficiency of the evidence because those claims were not intrinsic to his guilty plea. Following a valid guilty plea pursuant to Iowa Rule of Criminal Procedure 8(2)(b), only those defenses and objections which are fundamental to the plea itself remain available to the defendant. *State v. LaRue*, 619 N.W.2d 395, 398 (Iowa 2000); *Speed v. State*, 616 N.W.2d 158, 159 (Iowa 2000). With certain exceptions (none of which apply here), all other challenges are waived.

> Once a defendant has waived his right to a trial by pleading guilty, the State is entitled to expect finality in the conviction. This expectation is based on the fact that a guilty plea implicitly eliminates any question of the defendant's guilt. Accordingly, any

> constitutional challenge that would undermine the defendant's *conviction,* with certain exceptions not relevant here, is waived.

State v. Mann, 602 N.W.2d 785, 789 (Iowa 1999) (citations omitted).

Ineffective assistance of counsel claims which call "into question the voluntariness of the defendant's plea may be brought following a guilty plea." *LaRue*, 619 N.W.2d at 397 (citation omitted). Ineffective assistance claims which are "not a circumstance that bears on the knowing and voluntary nature of a plea," however, are not considered intrinsic or fundamental to the claim itself and do not survive the entry of a guilty plea. *Speed*, 616 N.W.2d at 159. We find that Carroll's claims of ineffective assistance due to his counsel's failure to file a motion to suppress evidence and failure to challenge the sufficiency of the evidence is not a circumstance that bears on the knowing and voluntary nature of his plea. We conclude that any prejudice that may have occurred from such failures did not survive Carroll's guilty plea.

Carroll also contends his trial counsel rendered ineffective assistance by failing to adequately prepare him and present the case for sentencing. Notwithstanding Carroll's failure to cite any authority to support his argument on this issue, we have reviewed the record and find this claim to be without merit. *See* Iowa R. App. P. 6.14(1) ("Failure in the brief to . . . cite authority in support of an issue may be deemed waiver of that issue."). To prove the prejudice element, Carroll would have to demonstrate that, if he had made other statements during the sentencing proceeding, the result would have been different. Beyond his assertion that error could have been avoided had Carroll been prepared to convince the district court judge he was acknowledging his substance abuse

problem and striving to overcome it, Carroll does not specify how different preparation would have changed the result. Further, we fail to see how preparing Carroll differently for sentencing would have changed his sentence. We reject Carroll's claims of ineffective assistance of counsel in their entirety.

III. Sentencing

Carroll contends that the district court abused its discretion by not granting him a deferred judgment. We review sentencing challenges for errors at law. Iowa R. App. P. 6.4; *State v. Liddell*, 672 N.W.2d 805, 815 (Iowa 2003). A sentence will not be reversed unless there has been an abuse of discretion or a defect in the sentencing procedure. *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). "An abuse of discretion is found when the court exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable." *State v. Evans*, 672 N.W.2d 328, 331 (Iowa 2003).

> In applying the abuse of discretion standard to sentencing decisions, it is important to consider . . . the host of factors that weigh in on the often arduous task of sentencing a criminal offender, including the nature of the offense, the attending circumstances, the age, character and propensity of the offender, and the chances of reform. Furthermore, before deferring judgment or suspending sentence, the court must additionally consider the defendant's prior record of convictions or deferred judgments, employment status, family circumstances, and any other relevant factors, as well as which of the sentencing options would satisfy the societal goals of sentencing. The application of these goals and factors to an individual case, of course, will not always lead to the same sentence. Yet, this does not mean the choice of one particular sentencing option over another constitutes error. Instead, it explains the discretionary nature of judging and the source of the respect afforded by the appellate process.

Formaro, 638 N.W.2d at 724-25 (internal citations omitted).

Carroll contends the district court impermissibly based its denial of a deferred judgment on only one essential factor, that he continued to use marijuana after his arrest, and that the court did not exercise a reasonable or rational balancing of all of the essential factors. "'The trial court and we on review should weigh and consider all pertinent matters in determining proper sentence.'" *State v. Cooley*, 587 N.W.2d 752, 754-55 (Iowa 1998) (quoting *State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979)). "Each sentencing decision must be made on an individual basis, and no single factor alone is determinative." *State v. Johnson,* 513 N.W.2d 717, 719 (Iowa 1994). Further, the district court must state its reasons for selecting a particular sentence. *State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000). While the reasons need not be detailed, the court must provide enough explanation to allow appellate review of the district court's discretion. *Id.* The sentencing court is not, however, generally required to state its reasons for rejecting its sentencing options. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996).

Although Carroll contends that the district court refused to grant a deferred judgment based on only one factor, a review of the hearing indicates that the court looked at more than one factor. At the sentencing hearing, the district court referred to the presentence investigation report, which stated that Carroll continued to use marijuana after his arrest and in spite of having been through drug counseling and treatment. The court told Carroll that his continued usage indicated that he did not understand the seriousness of the matter, and that he had not demonstrated to the court any good faith intention to change his conduct and become law-abiding. The court went on to state that, even at Carroll's age,

he needed to understand the consequences of his behavior, and that the use of marijuana is illegal. We find the court adequately stated its reasons for imposing Carroll's sentence. *See Cooley*, 587 N.W.2d at 755 (affirming sentence where court examined many factors relevant to the defendant's particular circumstance, including the nature of the offense and prior convictions, his "evident inability to reform his behavior," and the danger posed by his undeterred conduct).

IV. Conclusion

We reject Carroll's claims of ineffective assistance of counsel in their entirety. We conclude the district court did not abuse its discretion by not granting a deferred judgment.

AFFIRMED.