

IN THE COURT OF APPEALS OF IOWA

No. 7-658 / 07-0244
Filed October 12, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KENNETH JOSEPH IANO,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson,
Judge.

Kenneth Iano appeals the district court's sentence of five years
incarceration for his conviction of possession of a controlled substance with
intent to deliver. **AFFIRMED.**

Aaron D. Hamrock of McCarthy & Hamrock, West Des Moines, for
appellant.

Thomas J. Miller, Attorney General, Richard Bennett, Assistant Attorney
General, John P. Sarcone, County Attorney, and Daniel Voogt, Assistant County
Attorney, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

Kenneth Iano pled guilty to possession of a controlled substance (marijuana) with intent to deliver. Iowa Code § 124.401(1)(d) (2005). The district court sentenced him to a prison term not exceeding five years. The court's written sentencing order stated:

Granting probation in this matter is denied because probation would not provide reasonable protection of the public and maximum opportunity for rehabilitation of defendant. The Court has further considered the age of the defendant, as well as defendant's prior criminal record, and that probation would lessen the seriousness of the offense.

On appeal, Iano contends the district court "abused its discretion in issuing [him] a sentence of incarceration." To support his claim Iano notes the following: (1) the preparer of a presentence investigation report recommended probation, (2) he "acknowledged his substance abuse problem with marijuana and took substantial measures to address his substance abuse issues," (3) he was "gainfully employed," and (4) he "had supportive family members."

The district court considered the sentencing goals set forth in Iowa Code section 901.5, as well as pertinent factors. *State v. Fumaro*, 638 N.W.2d 720, 724-25 (Iowa 2002). At the sentencing hearing, the district court stated:

I have to come up with a sentence here that will protect the community from the possibility that you would commit other offenses and something that gives you the maximum opportunity for your rehabilitation

. . . [T]he two things that really stand out to me, sir, are the fact that you have a lengthy, lengthy criminal history. And we can talk all we want about the significance of these crimes that you have been charged with and that you have been convicted of and pled guilty to, whatever the resolution was. It's been going on for 16 years now. It started in 1990. You've been through a treatment plan once before not too long ago. Apparently, you say it is

because they didn't really address your problem, but I just have a hard time . . . believing that

. . . .

. . . [T]he other thing that apparently is not in dispute here is the amount of marijuana that we are talking about . . . some six pounds of it I have considered the need to protect the community from further offenses by you. I have considered the need to rehabilitate you, sir. And I think it is time for the reality check.

We conclude the district court did not abuse its discretion in sentencing Iano to prison. *Id.* at 724.

AFFIRMED.