

IN THE COURT OF APPEALS OF IOWA

No. 7-777 / 07-0114
Filed November 29, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JUDITH ANNE EATON,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark J. Smith,
Judge.

Defendant appeals from the judgment and sentence of probation following
a guilty plea. **SENTENCE VACATED AND REMANDED FOR
RESENTENCING.**

Brian Farrell, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney
General, and Michael J. Walton, Acting Scott County Attorney, for appellee.

Considered by Huitink, P.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

Judith Eaton appeals from the judgment and sentence of three years probation entered upon her conviction of one count of second-degree arson and one count of using a juvenile to commit an indictable offense in violation of Iowa Code sections 712.3, 709A.6 (2005) following a guilty plea. Eaton contends errors occurred during the sentencing process and requests her sentence be vacated and the case remanded for resentencing.

We review sentencing procedures for an abuse of discretion. *State v. Craig*, 562 N.W.2d 633, 634 (Iowa 1997). “Such abuse will only be found if the district court’s discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable.” *Id.*

Eaton first argues the trial court failed to consider the sentencing option of a deferred judgment. Eaton signed a memorandum of plea agreement which detailed the State’s sentencing concessions: “The State will recommend against incarceration . . . recognizing that the court may grant a deferred judgment or place defendant on probation.” A presentence investigation report (PSI) was compiled, which stated Eaton had a prior deferred judgment. However, no deferred judgment was found after a search of the deferred judgment docket. The judge had access to both documents at sentencing.

At the sentencing hearing, the court asked if Eaton had reviewed the presentence report and had any corrections to make to it. Eaton had “no additions or corrections.” Next, the court allowed Eaton’s counsel to make a statement regarding sentencing and he replied:

As you’ll note, my client has essentially no criminal history. We’re asking the court to follow the plea agreement. I believe the plea

agreement calls for the State's recommendation of probation and that probation will eventually be transferred up to – Bellevue, is it?

The court reviewed the PSI and stated, "I don't find any serious – really serious violations, although, Ms. Eaton, you've had a prior deferred judgment." Because the court may have considered a nonexistent prior deferred judgment, we must remand for resentencing.

Eaton next argues the court erred by failing to provide reasons for the sentence imposed. The court sentenced Eaton at the same time it sentenced her husband. It is unclear if the reasons given by the court for the sentence imposed applied to both Eatons or to just Mr. Eaton. Resentencing will give the court the opportunity to clarify its reasoning.

SENTENCE VACATED AND REMANDED FOR RESENTENCING.