

IN THE COURT OF APPEALS OF IOWA

No. 8-039 / 07-1442
Filed February 13, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

COREY KENNETH SCHMIDT,
Defendant-Appellant.

Appeal from the Iowa District Court for Floyd County, Peter B. Newell,
Judge.

Corey Schmidt appeals the sentence imposed following his guilty plea to a
charge of serious injury by vehicle. **AFFIRMED.**

Judith O'Donohoe and Todd Prichard, of Elwood, O'Donohoe, Braun &
Churbuck, Charles City, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney
General, and Rolf Aronsen, Special Prosecutor, for appellee.

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

MILLER, J.

Corey Schmidt appeals the sentence imposed following his guilty plea to a charge of serious injury by vehicle. He claims the district court did not state on the record the reasons for the sentence imposed, in violation of Iowa Rule of Criminal Procedure 2.23(3)(d), and it abused its discretion by imposing a term of incarceration. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

The record reveals the following facts. On August 12, 2006, Schmidt drank alcohol at a local golf tournament in Charles City. He left the golf course around 5:45 p.m. driving a black Monte Carlo. As Schmidt left he pulled out onto Highway 18 in front of Robert Sanford and his wife, causing Sanford to apply his brakes. Sanford noted that the car that pulled out in front of the Sanfords was black and that it rapidly accelerated to a high rate of speed.

Around this same time sixteen-year-old Lauren Anne Veeder was riding her bicycle westbound on Highway 18. When she heard a vehicle she looked behind her and saw a black car approaching. According to Veeder's later statement to the police, she then moved over to the white line of the road, as close to the edge of the road as possible without riding on the gravel shoulder. She stated that only seconds later the black car hit her and she landed in the ditch facing the road. The car did not stop after hitting her.

Sanford saw Veeder in the ditch waving for help so he and his wife stopped, gave Veeder first aid, and called 911. As a result of the accident Veeder suffered several injuries, including a cut to her face which required plastic

surgery; lacerations to her hands, arms, and legs, which caused scaring; lower back problems for several months; dental problems; and severe and ongoing nightmares and anxiety. Her medical bills totaled over \$10,000. The collision with Veeder knocked Schmidt's right mirror off, broke the passenger side windshield, damaged the right side of his car, and caused the right front tire to go flat.

After receiving a 911 call from Schmidt admitting he hit a bicycle on Highway 18, investigating Deputy Chris Myers of the Floyd County Sheriff's Department left the accident scene and went to Schmidt's house to take his statement. Schmidt stated to Deputy Myers that he knew he had hit a bicycle but because his cell phone was dead and he could not call for help he just drove home, parked his car, and called his mother. His mother told him she had heard on the police scanner that the police were looking for him and he should call the police. After speaking with his mother he then called the police and told them he hit the bicycle. Schmidt stated to Myers that he knew he hit a bike, he knew the person on the bike was injured, and that he did not stop to check on the person. At that point Myers advised Schmidt he was under arrest for operating while intoxicated (OWI) and transported him to the sheriff's office.

On the way to the sheriff's office Deputy Myers observed other signs Schmidt was intoxicated, including a strong smell of alcohol on Schmidt's person, bloodshot watery eyes, and slurred speech. At the station Myers administered field sobriety tests, which Schmidt failed. Schmidt consented to a Datamaster

breath test a little less than an hour after the accident. The test revealed an alcohol concentration of .213.

Initially Schmidt was charged with OWI. However the State later made a motion to dismiss this charge and the court dismissed it. Eventually Schmidt was charged, by trial information, with serious injury by vehicle (Count I), in violation of Iowa Code section 707.6A(4) (2005), violating accident requirements by failing to immediately notify law enforcement of an accident resulting in injury to a person (Count II), in violation of section 321.266(1), and violating accident requirements by failing to stop at the scene after being involved in an accident resulting in injury to a person (Count III), in violation of section 321.261(2).

Pursuant to a plea agreement Schmidt pled guilty to Counts I and III and the State agreed to move to dismiss Count II. The court dismissed Count II. On appeal Schmidt challenges only the sentence imposed on Count I.¹ On Count I the State agreed to recommend a fully suspended sentence; a fully suspended fine; probation for three to five years; completion of a substance abuse evaluation and treatment; and payment of the victim's unreimbursed medical expenses, the surcharge, and court costs. The district court accepted Schmidt's guilty pleas in open court and ordered that a presentence investigation (PSI) be conducted by the department of correctional services.

At the sentencing hearing the State recommended the sentence it had agreed to in the plea agreement. The PSI report submitted to the court prior to

¹ To the extent Schmidt's appeal might arguably be read as challenging the sixty-day concurrent term of incarceration imposed on Count III, we deem the issue waived as Schmidt does not make any argument or cite any authority in support of such an issue in his brief. See Iowa R. App. P. 6.14(1)(c) ("Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.").

sentencing similarly recommended a fully suspended sentence on Count I. At sentencing the court heard from the victim by way of a written statement read by her attorney, from the victim's father, from Schmidt, and from Mr. Schmidt's aunt. After taking all of this information into account, the court stated the following to Schmidt.

What happened here was truly terrible. Mr. Schmidt acted in a grossly irresponsible fashion, and he devastated a young girl and her family's life.

I don't think that there is anything that the Court can do in the sentencing that is going to rectify the situation. I don't think there is any way the Court can give this victim back this last year of her life. The Court can't take away the pain that you have caused her; the anxiety that you've made her suffer through; anxiety that her family has had to suffer through. The Court can't make this situation the way it was before; it can't bring back what she had.

I appreciate that you had not committed any crimes before this time. I appreciate that your family cares for you and they think you are a good person. And again, the Court is not in the business of deciding whether one is a good person or not. It is the function of the Court to impose a sentence that is commensurate . . . a sentence that recognizes the seriousness of the offense that you have committed.

I have some concern about imposing a prison sentence. I don't want the victim to feel in any way guilty or responsible. I think that their position, as expressed through [the prosecuting attorney], that they don't want you to lose your job over this, is a statement of compassion. But I think in the end, Mr. Schmidt, I view it as a requirement of justice that you have your life disrupted; that you suffer some more severe consequences for your irresponsible behavior.

The court sentenced Schmidt to a period of incarceration of no more than five years on Count I, suspended the fine, and ordered him to pay victim restitution in accordance with a statement of pecuniary damages. Schmidt was sentenced to sixty days on Count III. The sentences were ordered to run concurrently.

Schmidt appeals the sentence, claiming the district court violated Iowa Rule of Criminal Procedure 2.23(3)(d) in sentencing him because the court did not adequately state on the record its reasons for selecting the five-year sentence imposed. In the alternative, he claims that even if we conclude the court did adequately state its reasons for the sentence, it abused its discretion by imposing a prison term contrary to the wishes of the victim and the recommendations of the State and the PSI report.²

II. SCOPE AND STANDARDS OF REVIEW.

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). Our standard of review is 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, such as the court's consideration of impermissible factors. *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000); *State v. Gonzalez*, 582 N.W.2d 515, 516 (Iowa 1998).

² Under Count I Schmidt was charged with “caus[ing] a serious injury to another . . . by a means as described in subsection 1 of Section 707.6A, in violation of Section 707.6A(4).” Subsection 1 of section 707.6A criminalizes “caus[ing] the death of another *by operating a motor vehicle while intoxicated.*” (Emphasis added). The parties do not raise, and we do not address, the question of whether the district court in fact had discretion to suspend any or all of the sentence imposed on Schmidt’s conviction under Count I. See Iowa Code § 707.6A(7) (“Notwithstanding the provisions of sections 901.5 and 907.3, *the court shall not defer judgment or sentencing, or suspend execution of any part of the sentence applicable to the defendant for a violation of subsection 1, or for a violation of subsection 4 involving the operation of a motor vehicle while intoxicated.*” (emphasis added)).

III. MERITS.

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) (emphasis added).

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.” The statement of reasons may be terse or succinct provided the “brevity of the court's statement does not prevent review of the exercise of the trial court's sentencing discretion.” *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989). 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).

Here the sentencing court gave a detailed explanation, set forth above, of its reasons for sentencing Schmidt to prison rather than to a suspended sentence and probation as recommended by the State and the PSI report. The court's lengthy statement at the sentencing hearing shows the court took into consideration several of the pertinent matters in determining sentence, including the nature and seriousness of the offense, the defendant's lack of prior convictions, his family situation, the victim's and the victim's family's wishes, and the surrounding circumstances. See *State v. Manser*, 626 N.W.2d 872, 874 (Iowa Ct. App. 2001) ("In determining an appropriate sentence a court may look to the facts and circumstances surrounding the crime.").

Furthermore, the PSI report and the victim impact statement were also properly presented to and considered by the court prior to sentencing. See Iowa Code § 901.5 ("After receiving and examining all pertinent information, including the presentence investigation report and victim impact statements, if any, the court shall consider the following sentencing options."). The PSI report informed the court of Schmidt's employment history, his family dynamics, what he had done toward rehabilitation, and his lack of prior convictions. Thus, despite Schmidt's argument to the contrary, the court did take into account such factors as his lack of any prior criminal history, the victim's wishes, and the impact of the sentence on Schmidt and his family.

If the court “indicates those concerns which motivated the court to select the particular sentence which it imposed” the purpose of Rule 2.23(3)(d) is satisfied. *State v. Garrow*, 480 N.W.2d 256, 260 (Iowa 1992). The court’s statement clearly shows the concerns which motivated it in sentencing Schmidt, including the seriousness of the offense, Schmidt’s “grossly irresponsible” actions in leaving the scene of the accident knowing a person had been injured, and the significant impact Schmidt’s crime had on the victim.

We conclude the district court adequately stated on the record its reasons for the particular sentence imposed, and satisfied the requirements of rule 2.23(3)(d). In so concluding we note again that although the sentencing court must demonstrate its exercise of discretion by stating upon the record the reasons for the particular sentence imposed, it is not required to give its reasons for rejecting any particular sentencing options. *Thomas*, 547 N.W.2d at 225

Schmidt claims, in the alternative, that even if the court adequately complied with rule 2.23(3)(d) it nevertheless abused its discretion by sentencing him to prison instead of suspending the sentence and putting him on probation as recommended by the State and the PSI. More specifically, Schmidt claims the court did not consider mitigating factors, focused only on one sentencing factor, and did not uphold the interests of the victim.

As set forth above, it is clear from the court’s lengthy statement at the sentencing hearing that it took into account all of the surrounding circumstances, not solely the nature of the offense as argued by Schmidt. Clearly the court did properly take into consideration the nature of the offense and the surrounding

circumstances. These included the facts that Schmidt drove with an alcohol concentration of .213, hit a person on a bicycle knocking her into the ditch, left the scene of the crime without helping the person even though he knew he had hit and injured someone, and went home and called the police only after calling his mother and learning from her that the police were looking for him. However, in determining sentence the court also took into consideration several mitigating factors. Not only were all of Schmidt's personal circumstances (i.e. family dynamics, employment situation, criminal history) included in the presentence investigation report the court received and considered, but the court also specifically noted on the record it was considering Schmidt's family circumstances and his lack of a prior criminal history.

In addition, the court heard from the victim, the victim's father, Schmidt, and Schmidt's aunt. The court specifically noted on the record the victim's wishes that Schmidt not lose his job, but determined that justice nevertheless required a prison sentence. Thus, despite Schmidt's argument to the contrary, it is clear the victim's wishes and interest were taken into account by the court.

Finally, we note that Schmidt mentions in his brief the fact a court cannot establish a fixed sentencing policy to govern every case. See *State v. Hildebrand*, 280 N.W.2d 393, 395 (Iowa 1979). Although he is correct on this point, we find no indication of such a fixed sentencing policy in the record before us.

We conclude the district court did not abuse its discretion by not suspending the prison sentence it imposed. The court took into account the

nature of the crime, the surrounding circumstances, and the harm to the victim. It also considered several mitigating factors including Schmidt's family dynamics, his employment history, the fact he has no prior criminal history, and the victim's wishes that he not lose his job. The court acted within its broad discretion in imposing the sentence it did.

IV. CONCLUSION.

For the reasons set forth above, we conclude the sentencing court adequately stated on the record its reasons for the sentence imposed, and satisfied the requirements of Iowa Rule of Criminal Procedure 2.23(3)(d). We further conclude the court did not abuse its discretion by sentencing Schmidt to prison rather than suspending the sentence.

AFFIRMED.