

IN THE COURT OF APPEALS OF IOWA

No. 8-105 / 07-0496
Filed May 14, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

PIERRE ANTOINE PIERCE,
Defendant-Appellant.

Appeal from the Iowa District Court for Dallas County, Gregory A. Hulse,
Judge.

A defendant appeals from the district court's denial of his application to
discharge probation. **AFFIRMED.**

Alfredo Parrish of Parrish, Kruidenier, Dunn, Boles, Gribble, Cook, Parrish,
Gentry & Fisher, L.L.P., Des Moines for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney
General, and Wayne Reisetter, County Attorney, for appellee.

Heard by Vogel, P.J., and Zimmer and Baker, JJ.

VOGEL, P.J.

Pierre Pierce appeals from the district court's denial of his application to discharge or modify the conditions of his probation, including the requirement that he participate in a sexual offender treatment program. Because we find no abuse of discretion in the district court's denial of Pierce's application and the conditions of probation are reasonably related to the statutory goals, we affirm.¹

I. Background Facts and Proceedings

On January 27, 2005, Pierce assaulted his former girlfriend and then burglarized her apartment. As a result of this incident, Pierce pled guilty to burglary in the third degree in violation of Iowa Code section 713.6A (2005), assault with intent to commit sexual abuse in violation of Iowa Code section 709.11, false imprisonment in violation of Iowa Code section 710.7, and criminal mischief in the fourth degree in violation of Iowa Code section 716.6. On October 28, 2005, the district court imposed a five-year sentence for the burglary conviction, suspended that sentence and placed Pierce on supervised probation. The court then imposed a two-year sentence on the assault with intent to commit sexual abuse conviction, and one year each on the false imprisonment and criminal mischief convictions. The sentences were ordered to run concurrently. Additionally, Pierce was ordered to register as a sex offender as part of the sentence on the assault conviction. On the day of sentencing, Pierce signed a Department of Correctional Services (DCS) probation agreement, in which he agreed to register as a sex offender, attend sex offender treatment, not contact

¹ We deny the State's motion to consider Pierce's April 2008 probation violation.

the victim, and pay restitution to the victim, court costs, and court-appointed attorney fees. Pierce did not directly appeal his sentence.

While incarcerated, Pierce did not have any disciplinary reports. He completed a five-month sexual offender treatment program, which was an accelerated program designed for sexual offenders serving two years or less. On September 24, 2006, after serving approximately eleven months, Pierce was discharged from his prison sentences. However, Pierce remained on probation for the burglary conviction.

Following his release from prison, Pierce was allowed to travel to California to attend a basketball camp and was offered the opportunity to try out for an NBA developmental league team. However, DCS would not allow Pierce to relocate to California unless his probation was transferred as it would be too difficult to supervise him in California from Iowa. Upon Pierce's application to transfer probation, the State of California rejected Pierce's request for a variety of reasons, including that he did not have any family in California, did not have a permanent residence in California, and his employment prospects appeared uncertain. As a registered sex offender, California would also require Pierce to participate in psychiatric treatment. Additionally, California's denial noted that registered sex offenders are not allowed to travel regularly.

On January 11, 2007, Pierce filed an application to discharge from probation or to modify the conditions to permit him to travel to California and if successful in his NBA tryout, be able to travel as needed to pursue his basketball career. The State resisted Pierce's application, asserting that Pierce had not met the requirements for early discharge of probation, which are set forth under Iowa

Code sections 907.7 and 907.9 (2007). At a hearing on the matter, Pierce specified that he was requesting either to be discharged from probation or that the terms of probation be modified so that he would not have to complete further sexual offender treatment.

The district court denied Pierce's application to discharge probation or modify the conditions, finding that the purposes of probation had not yet been fulfilled and Pierce had failed to satisfy his financial obligations under his sentences. The district court stated that

at this time, only a little over four months after having been released from prison, sufficient time has not passed to determine whether rehabilitation efforts have been successful or whether Mr. Pierce still poses a risk to the community that he will commit further offenses.

The district court further found that there was sufficient evidence demonstrating that Pierce's participation in the sex offender treatment program was reasonably related to the crime for which he was on probation.

Pierce filed a motion requesting the district court to reconsider its ruling. The motion asserted that the district court failed to consider all of the relevant facts, including the nature of the relationship between Pierce and his victim, the fact that Pierce completed a short-term sex offender treatment program while incarcerated, that Pierce had discharged his sentence from the sexual abuse conviction, and that Pierce's agent testified he would pay Pierce's financial obligations to the court. Additionally, the motion asserted that the district court erroneously applied the principles set forth in *State v. Valin*, 724 N.W.2d 440 (Iowa 2006). In its subsequent ruling, the district court denied Pierce's motion for reconsideration, but discussed each one of Pierce's "criticisms." The district

court stated that it had considered all the facts raised by Pierce and “the Defendant’s insistence on the court’s consideration of the victim’s fault in the incident only further weakens Defendant’s stance that he accepts responsibility for his actions and has been rehabilitated.” Further, the district court reiterated that sex offender treatment “is directly linked to the current criminal incident and his criminal history leading to a prior short-term probation” and the maximum rehabilitative purpose of imposing this condition.

II. Standard of Review

We review a defendant’s sentence for correction of errors of law. *State v. Valin*, 724 N.W.2d 440, 444 (Iowa 2006). However, when a defendant challenges specific probation conditions or probation duration, our review is for abuse of discretion. *Id.* The district court has broad discretion in probation matters and “our task on appeal is not to second guess the decision made by the district court, but to determine if it was unreasonable or based on untenable grounds.” *Id.* at 445. Thus, there is an abuse of discretion when there is no support for the district court’s decision in the record. *Id.*

III. Jurisdiction

The State first contends that Pierce does not have a right to directly appeal from the denial of his application to discharge or modify probation.² The State asserts that the district

court’s discretionary decision to shorten the length of a defendant’s probationary period under Iowa Code sections 907.7 or 907.9(1) is similar to a court’s decision whether to reconsider a sentence under [Iowa Code sections 902.4 or 903.2], and should not be subject to

² The State did not challenge the defendant’s right to petition the district court to discharge probation or modify the terms of probation.

appellate review unless the decision at issue is grounded upon a false, illegal, or unconstitutional reason.

See *State v. Tindell*, 600 N.W.2d 308, 310 (Iowa 1999). However, a defendant cannot appeal a district court's decision to reconsider his sentence because Iowa Code section 902.4 and 903.2 both state that the district "court's decision to take the action or not to take the action is *not* subject to appeal." *Id.* (emphasis added). The Iowa Code sections authorizing a district court to discharge a defendant's probation does not have the same provision prohibiting appeal. Iowa Code §§ 907.7 & 907.9(1). Had the legislature intended to prohibit appeal from the district court's decision on whether to discharge a defendant's probation, it could have provided the same prohibition against appeal. See *State v. Schultz*, 604 N.W.2d 60, 62 (Iowa 1999) (discussing that when a statute is plain and its meaning clear, the court should not search for meaning beyond the words of the statute); Iowa R. App. P. 6.14(6)(m) ("[T]he court searches for the legislative intent as shown by what the legislature said, rather than what it should or might have said.").

IV. Discharge from or Modification of Probation

Pierce claims that the district court failed to consider all the facts he presented and then shifted the burden of proof onto him. Ultimately, Pierce asserts the district court should have discharged him from probation.

The length of the probationary period for a felony conviction shall not be less than two years and shall not exceed five years. Iowa Code § 907.7. In determining the specific length of probation, the district court must determine what period of time "is most likely to provide maximum opportunity for the

rehabilitation of the defendant, to determine whether or not rehabilitation has been successful, and to protect the community from further offenses by the defendant.” Iowa Code § 907.7. However, the district court may discharge a defendant from probation upon a finding that the purposes of probation have been fulfilled and all fees imposed have been paid. Iowa Code §§ 907.7 & 907.9.

First, we note that the burden of proof rested with Pierce. See *State v. Terry*, 569 N.W.2d 364, 367 (Iowa 1997) (“[A] party making a motion ordinarily has the burden to support it.”); cf. 24 C.J.S. *Criminal Law* § 2165 (2005) (discussing that the State has the burden of proof in a probation revocation hearing). Pierce filed his application to discharge probation fifteen months after sentencing. Cf. *Valin*, 724 N.W.2d at 448-49 (reviewing probation term on direct appeal from sentencing). Pierce faults the district court for concluding that Pierce failed to prove that certain probationary terms would preclude him from pursuing his plans. However, the district court was merely responding to Pierce’s questions and requested relief. While the district court discussed much of the information Pierce presented in his application, nothing in its ruling changed the burden of proof.

The truncated facts³ that lead to Pierce’s convictions are that he entered into his former girlfriend’s apartment, uninvited, and sexually assaulted her. After she escaped from his hold on her and fled the scene, Pierce ransacked the apartment and stole her laptop computer.

Pierce asserts that because he discharged his assault with intent to commit sexual abuse sentence, he cannot be required to attend sexual offender

³ The record does not contain a transcript of the plea proceeding.

treatment based solely on his burglary conviction.⁴ He claims that the district court improperly applied *State v. Valin*, 724 N.W.2d 440 (Iowa 2006). In *Valin*, the defendant was convicted of operating while intoxicated (OWI), second offense, and placed on probation for two years. *Id.* at 441. One requirement of Valin's probation was that he participate in sexual offender treatment because he had a 1999 conviction for assault to commit sexual abuse. *Id.* at 442. From Valin's direct appeal of his sentence, our supreme court held that although a prior conviction can provide the needed history to justify a special condition of probation, in this case there was not a "reasonable relationship between the condition of probation and the statutory goals as related to the current situation of the probationer." *Id.* at 447-48.

However, the present case differs from *Valin* as the current burglary conviction, for which Pierce is on probation, arose from the same incident in which he was convicted for assault with intent to commit sexual abuse. The *Valin* court stated: "The reasonableness of sex abuse treatment as a condition of probation for an *unrelated* crime of conviction must be supplied by the individual facts or evidence in each case." *Id.* at 448 (emphasis added). We agree with the district court that because the two crimes arose from the same incident, they are closely related. Therefore, as the district court found, there is a reasonable relationship between Pierce's required participation in the sex offender treatment

⁴ Burglary is defined in Iowa Code section 713.1:

Any person, having the intent to commit a felony, assault or theft therein, who, having no right license or privilege to do so, enters an occupied structure . . . or after the person's right, license or privilege to be there has expired, or any person having such intent who breaks an occupied structure, commits burglary.

program and the statutory purposes of probation for his burglary conviction. Pierce even acknowledged that the same issues, e.g., “respecting someone else”, led to both his assault with intent to commit sexual abuse conviction and his burglary conviction.

Pierce next contends the district court should have stricken the requirement of any further sexual abuse treatment as he completed a similar program while incarcerated. Pierce’s application, as well as his testimony, also pointed to his “successful” completion of probation in November 2003, following his plea to assault with no intent of injury.⁵

District courts have broad authority to establish the conditions of probation and “are authorized to impose any reasonable conditions that either promote rehabilitation of the defendant or the protection of the community.” *Valin*, 724 N.W.2d at 445-46 (citations omitted); see also Iowa Code § 907.6. In order for a condition of probation to be reasonable, it must reasonably address the statutory goals of probation. *Valin*, 724 N.W.2d at 446. As noted above, those statutory goals “are to provide maximum opportunity for the rehabilitation of the defendant and to protect the community from further offenses by the defendant.” Iowa Code § 907.7.

Pierce’s probation supervisor, Dudley Allison, testified as to his recommendation that Pierce complete further sex offender treatment. He stated that it was apparent the first treatment in 2003 was unsuccessful and the recent second treatment was only an abbreviated program due to the short time of

⁵ In 2002, Pierce was charged with sexual assault in the third degree. He pled guilty to assault with no intent of injury and received a deferred judgment; he was required to and did complete one year of probation with sexual offender treatment in November 2003.

Pierce's incarceration. He explained that a traditional sex offender treatment program is eighteen- to twenty-four months and the longer program is better suited to meeting the ultimate goal of rehabilitation.

The accelerated sexual offender treatment program completed by Pierce for the 2002 conviction was substantially the same program he completed while incarcerated for the present convictions. The district court could properly conclude that the first short-term program had not been successful in preventing further offenses, as Pierce engaged in further assaultive behavior, leading to the current convictions. See *State v. Ogle*, 430 N.W.2d 382, 383 (Iowa 1988) (“[W]e do not think the district court acted improperly in rejecting a form of treatment that had obviously not been effective.”). Allison also testified that the goal of the sexual offender treatment plan was to rehabilitate so that there were not any future victims. See *Ogle*, 430 N.W.2d at 384; *Valin*, 724 N.W.2d at 448, (stating the probationary condition of sexual offender treatment was designed to rehabilitate the defendant and prevent further offenses, which would in turn protect the community.) For the maximum opportunity for rehabilitation, Allison recommended Pierce complete the eighteen- to twenty-four month program.

At the time Pierce filed his application to discharge or modify his probation, it had been less than four months since his release from prison and approximately three years and nine months remained until he would complete the current supervised probationary period. The district court noted that although he successfully completed a relatively short probationary period in 2003, he subsequently committed more criminal offenses, including with the same type of assaultive conduct, which resulted in his incarceration and current probation.

This was a substantial factor in the sentencing court's initial decision to impose a probationary period of five years. We agree with the district court that not enough time has passed to determine whether rehabilitation efforts have been successful to discharge Pierce's probation. The district court did not abuse its discretion in imposing further sexual offender treatment as a condition of probation.

Finally, the district court denied Pierce's discharge from probation because Pierce had not paid any costs, fines, or restitution except for \$143, which was withdrawn by prison officials from his prison account. See Iowa Code § 907.7. He still owed \$5,542.26 in various court-ordered financial obligations. Although Pierce's agent testified that he would pay all of the remaining fines owed if Pierce was discharged from probation, Iowa Code section 907.7 does not allow for discharge of probation upon a promise to pay outstanding fines, and makes no provision for the payment by another person.

V. Conclusion

We agree with the district court that the purposes of probation had not been satisfied nor had the fees imposed been paid. The district court did not abuse its discretion in denying Pierce an early discharge or modification of probation. Therefore, we affirm the district court.

AFFIRMED.