

IN THE COURT OF APPEALS OF IOWA

No. 8-766 / 07-1916
Filed October 1, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHARLES RAY STAPLES,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

Defendant appeals his sentence in an OWI, third offense, case, claiming (1) the district court erred in concluding it did not have discretion to suspend the fine levied against him, (2) trial counsel was ineffective in failing to raise a constitutional challenge to the pertinent sentencing statute, and (3) the sentence was “unduly harsh.” **AFFIRMED.**

Mark C. Smith, State Public Defender, and Stephan Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean Pettinger, Assistant Attorney General, John P. Sarcone, County Attorney, and David Porter, Assistant County Attorney, for appellee.

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

VAITHESWARAN, J.

Charles Staples pled guilty to operating a motor vehicle while under the influence, third offense. The district court sentenced Staples to a term of imprisonment not exceeding five years, suspended all but 300 days, and ordered those days served at a county jail. The court also ordered Staples to sign up for probation on his release from jail. He was to remain on probation for five years from the date of sentencing. Finally, the court imposed a \$3125 fine.

On appeal, Staples argues (1) the district court erred in concluding it did not have discretion to suspend the fine, (2) trial counsel was ineffective in failing to raise a constitutional challenge to the pertinent sentencing statute, and (3) the sentence was “unduly harsh.”

I. Iowa Code section 321J.2(2)(c) (2007) authorizes the imposition of a fine of “not less than three thousand one hundred twenty-five dollars” for the crime of OWI, third offense. The key question is whether the district court had discretion to suspend the fine. Iowa Code section 321J.2(3)(a)(4) answers that question. It states in pertinent part:

Notwithstanding the provisions of sections 901.5 and 907.3, the court . . . shall not suspend execution of any other part of a sentence not involving incarceration imposed pursuant to subsection 2, if . . . the defendant refused to consent to testing requested in accordance with section 321J.6.

Section 321J.2(3)(a)(4) is plain and unambiguous. Therefore, we need not resort to rules of construction, as Staples urges. See *Coralville Hotel Assocs., L.C. v. City of Coralville*, 684 N.W.2d 245, 248 (Iowa 2004) (“[P]recise and unambiguous language should be given its plain and rational meaning without resort to the rules of statutory construction.”). The provision precludes the suspension of a

fine if the defendant failed to consent to testing. Staples concedes he did not consent to testing. Therefore, the district court correctly concluded it had no authority to suspend the fine.

II. Staples contends his attorney was ineffective in failing to argue that Iowa Code section 321J.2(3) was unconstitutionally vague. The Due Process Clauses of the United States and Iowa Constitutions prohibit the enforcement of vague statutes. *State v. Nail*, 743 N.W.2d 535, 539 (Iowa 2007). As noted, section 321J.2(3) is not vague. Therefore, Staples cannot establish that his attorney breached an essential duty in failing to raise this constitutional challenge to the statute. See *Strickland v. Washington*, 466 U.S. 668, 688, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674, 694 (1984).

III. Staples finally contends his sentence was “unduly harsh.” A sentence that falls within the statutory limits is set aside only if the district court abused its discretion. *State v. Valin*, 724 N.W.2d 440, 444 (Iowa 2006).

The district court gave the following reasons for declining to place Staples on probation immediately: “because of your criminal history, probation is not warranted for protection of the community, punishment for you, and deterrence of others.” The district next explained its rationale for imposing jail time, stating:

You will receive a lengthy jail sentence. I’m hopeful that you do have some rehabilitative efforts, and I’m going to provide for that in my sentencing as well. I’m hopeful you’re being candid with your desires to support your daughter and make better choices. You’re certainly at an age where you should be. Your history tells one story. It’s up to you what you do going forward, and you’re capable of making other choices. But as of now you’ve made a lot of bad ones, and that’s what this case – that’s going to dictate my sentence here.

The court also explained its reason for declining to suspend the fine, stating, “I understand the fine to be a mandatory minimum and one that I’m not allowed to suspend.”

These reasons find support in the record and reflect a consideration of the pertinent statutory factors. See Iowa Code § 901.5 (requiring court to decide, in its discretion, which authorized sentence “will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others”). We discern no abuse of discretion.

We affirm Staples’s judgment and sentence for operating while intoxicated, third offense.

AFFIRMED.