

**IN THE COURT OF APPEALS OF IOWA**

No. 8-838 / 08-0323  
Filed November 26, 2008

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**JOHN DOUGLAS SAURER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Lee (South) County, Gary Noneman, District Associate Judge.

John Saurer appeals his judgment and sentencing following his guilty plea to the charge of fraudulent practices in the fourth degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, and Michael Short, County Attorney.

Considered by Huitink, P.J., and Vaitheswaran and Potterfield, JJ.

**POTTERFIELD, J.****I. Background Facts and Proceedings**

John Saurer and his wife obtained utilities from three companies using the name and credit of Jessica Schmid, a minor who used to babysit for them. Saurer was charged with identity theft and filed a written guilty plea to the lesser-included charge of fraudulent practices in the fourth degree in violation of Iowa Code sections 714.1(3), 714.8(10), and 714.12 (2007). The district court accepted Saurer's written guilty plea and set sentencing for January 29, 2008. Saurer appeals his judgment and sentencing, arguing that the district court did not provide him an adequate opportunity to speak in mitigation of punishment at the sentencing hearing.

**II. Standard of Review**

We review sentencing challenges for errors at law. Iowa R. App. P. 6.4. Our scope of review on sentencing procedures is for an abuse of discretion. *State v. Craig*, 562 N.W.2d 633, 634 (Iowa 1997).

**III. Right to Allocution**

Iowa Rule of Criminal Procedure 2.23(3)(d) provides that prior to the rendering of judgment, "counsel for the defendant, and the defendant personally, shall be allowed to address the court where either wishes to make a statement in mitigation of punishment." Saurer asserts that he was not given this opportunity at the sentencing hearing, though he admits that his attorney was given the opportunity to speak on his behalf.

The words used by the sentencing court to offer the defendant the right to allocution do not need to duplicate the language of Rule 2.23. *Id.* at 635. "The

important thing is whether the defendant is given an opportunity to volunteer any information helpful to the defendant's cause." *Id.* Defendant's counsel's statements in mitigation of punishment do not alone satisfy the defendant's right to allocution. *Id.* at 637. In the past, courts have found that a district court's question-and-answer colloquy aimed at eliciting statements about punishment is sufficient to provide a defendant's right to allocution. See *State v. Christensen*, 201 N.W.2d 457 (Iowa 1972); *State v. Patterson*, 161 N.W.2d 736 (Iowa 1968); *State v. Glenn*, 431 N.W.2d 193 (Iowa Ct. App.1988).

In the present case, the district court held one sentencing hearing for both Saurer and his wife. Saurer's attorney spoke at length in support of mitigation of punishment. The district court then addressed Saurer's wife, asking her, "Ms. Saurer, is there anything you would like to say on your own behalf?" She responded, "I regret what has happened." After talking with Saurer's wife, the district court continued, "Mr. Saurer, what about you? How are you involved in this? What do you do?" The district court then conducted a question-and-answer session with Saurer regarding the details of the crime. After speaking with Saurer, the district court stated, "I sense no remorse is what I sense." Saurer responded by saying, "I'm sorry that this whole thing happened. I do. I regret it." Saurer also stated that he had no right to use somebody else's identity, that he did not claim that his actions were justified, and that his behavior was irresponsible. After this question-and-answer session with Saurer, the court addressed Saurer's attorney, asking, "Anything else, Mr. Dennis?" Saurer's attorney opted not to add anything further.

While the district court's compliance with Rule 2.23 was not ideal, we find that the district court's question-and-answer session with Saurer provided him an opportunity to volunteer information helpful to his cause. Though the district court did not explicitly ask Saurer if he had anything to say on his behalf, Saurer was able to inform the court through the question-and-answer session that he was sorry and regretted the incident, that he had no right to use someone else's identity, that his actions were not justified, and that his behavior was irresponsible. We find that the district court did not abuse its discretion in pronouncing sentence.

**AFFIRMED.**