

IN THE COURT OF APPEALS OF IOWA

No. 9-187 / 08-1137
Filed May 6, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JASON ROBERT WHEELER,
Defendant-Appellant.

Appeal from the Iowa District Court for Muscatine County, Patrick J. Madden and Gary D. McKenrick, Judges.

Jason Wheeler appeals his sentence following his guilty plea for sexual abuse in the third degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Martha J. Lucey, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, Gary Allison, County Attorney, and Alan Ostergren, Assistant County Attorney, for appellee.

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

MAHAN, P.J.

Jason Wheeler appeals his sentence following his guilty plea for sexual abuse in the third degree in violation of Iowa Code section 709.4(2)(c)(4) (2007). He argues the sentencing court abused its discretion in imposing his sentence. He further contends his trial counsel was ineffective in failing to object to the court's imposition of a special sentence pursuant to Iowa Code section 903B.1.

Wheeler was originally charged with sexual abuse in the third degree in violation of sections 709.4(2)(c)(2) and 709.4(2)(c)(4) for sexual acts he performed as an eighteen-year-old with his fourteen-year-old cousin between September and December 2007. He pled guilty to sexual abuse in the third degree in violation of section 709.4(2)(c)(4). The sentencing court rejected Wheeler's request for a suspended sentence or deferred judgment and sentenced him to a term of incarceration not to exceed ten years. The court also ordered Wheeler to be subject to the special sentence pursuant to section 903B.1, as required for chapter 709 class "C" felonies.

A sentence imposed by the district court is reviewed for errors at law. Iowa R. App. P. 6.4; *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). Sentencing decisions of the district court are cloaked with a strong presumption in their favor. *Formaro*, 638 N.W.2d at 724. "A sentence will not be upset on appellate review unless the defendant demonstrates an abuse of trial court discretion or a defect in the sentencing procedure, such as trial court consideration of impermissible factors." *Id.* In weighing and considering all pertinent matters in determining the proper sentence, the court should consider "the societal goals of sentencing criminal offenders, which focus on rehabilitation

of the offender and the protection of the community from further offenses.” *Id.*; see also *State v. August*, 589 N.W.2d 740, 744 (Iowa 1999). The court should further consider “the nature of the offense, the attending circumstances, the age, character and propensity of the offender, and the chances of reform.” *Formaro*, 638 N.W.2d at 724.

In this case, the record reveals the district court considered the information in the presentence investigation report and the recommendations of the parties. The court further considered the “egregious” nature of Wheeler’s offense, the harm Wheeler caused to the victim, the rehabilitative services necessary for Wheeler, the maximum deterrent effects the sentence would have on Wheeler, and Wheeler’s failure to comprehend the “extreme seriousness of his actions.” After consideration of all these factors, the district court selected Wheeler’s sentence.

Upon our review, we find the district court’s decision was within statutory limits, and was not unreasonable or based on untenable grounds or unproven charges. The court properly considered and weighed numerous appropriate factors in arriving at a sentence, and clearly stated valid reasons for the sentence it imposed. The court’s sentencing decision was well within its discretion, and we will not disturb it on appeal.

Wheeler further argues his trial counsel was ineffective in failing to object to the court’s imposition of a special sentence pursuant to Iowa Code section 903B.1. Specifically, he contends his counsel was ineffective in failing to challenge the constitutionality of section 903B.1. He alleges the 903B.1 sentence violates his due process rights.

We conduct a de novo review of ineffective assistance of counsel claims. *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008). To establish a claim of ineffective assistance of counsel, a defendant must prove (1) counsel failed to perform an essential duty and (2) prejudice resulted to the extent it denied the defendant a fair trial. *Id.* A defendant's failure to prove either element by a preponderance of the evidence is fatal to a claim of ineffective assistance. *State v. Polly*, 657 N.W.2d 462, 465 (Iowa 2003).

We conclude the record is inadequate to rule on Wheeler's claim of ineffective assistance of counsel. Ordinarily, we preserve ineffective assistance of counsel claims for postconviction proceedings to allow the facts to be developed and give the allegedly ineffective attorney an opportunity to explain his or her conduct, strategies, and tactical decisions. See *State v. Bearse*, 748 N.W.2d 211, 214 (Iowa 2008); *State v. DeCamp*, 622 N.W.2d 290, 296 (Iowa 2001). We therefore decline to rule on this issue of ineffective assistance in this direct appeal and preserve it for a possible postconviction proceeding.

We affirm Wheeler's conviction and sentence and preserve his claim of ineffective assistance of counsel for a possible postconviction proceeding.

AFFIRMED.