

IN THE COURT OF APPEALS OF IOWA

No. 9-189 / 08-1281
Filed April 8, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TOMMY CHESTER MOORE SR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Christine Dalton,
District Associate Judge.

Defendant appeals his conviction, based on his guilty plea, to a charge of
driving under suspension while barred as a habitual offender. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant
Attorney General, Michael J. Walton, County Attorney, and Rex J. Ridenour,
Assistant County Attorney, for appellee.

Considered by Miller, P.J., and Doyle, J., and Beeghly, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

BEEGHLY, S.J.**I. Background Facts & Proceedings**

On March 5, 2008, Tommy Moore was charged with driving under suspension while barred as a habitual offender, an aggravated misdemeanor, in violation of Iowa Code section 321.561 (2007). Moore entered a written plea of guilty on June 30, 2008, which acknowledged that he could be sentenced to a term of imprisonment not to exceed two years, and fined between \$625 and \$6250.

At the sentencing hearing, held on July 25, 2008, Moore requested to be placed on probation and stated he was willing to pay a larger fine than would be normal in recognition of his driving history. The court noted that Moore had seven prior convictions for driving while barred. The court gave serious consideration to Moore's proposal, but after checking Moore's history of paying fines, the court stated it was concerned about granting his request. The State recommended that Moore be sentenced to two years in prison.

The district court noted again that Moore had seven prior convictions for driving while barred. The court stated, "This is what I call somebody who just isn't going to pay attention to whatever punishment we give you." The court noted Moore previously had been sent to prison on a driving charge, and he continued to drive. In fact, Moore was released from prison in January 2008, and was picked up for driving while barred on February 12, 2008. Furthermore, Moore was in jail for a separate driving offense at the time of the sentencing hearing in July 2008.

Based on all of these factors, the court sentenced Moore to a term of imprisonment not to exceed two years. Moore was fined \$625 plus costs and attorney fees. Moore appeals his sentence.

II. Standard of Review

We review a sentencing decision for an abuse of discretion. *State v. Evans*, 672 N.W.2d 328, 331 (Iowa 2003). An abuse of discretion will be found if the court acts on grounds clearly untenable or to an extent clearly unreasonable. *State v. Leckington*, 713 N.W.2d 208, 216 (Iowa 2006).

III. Merits

Under Iowa Rule of Criminal Procedure 2.23(3)(d), “The court shall state on the record its reason for selecting the particular sentence.” The court should state its rationale for a particular sentence taking into consideration the offense and the defendant’s background. *State v. Lumadue*, 622 N.W.2d 302, 305 (Iowa 2001). The court should consider the nature of the offense, the attendant circumstances, and the defendant’s age, character, propensities, and chances of reform. *State v. Dvorsky*, 322 N.W.2d 62, 67 (Iowa 1982). No single factor, including the nature of the offense, should be solely determinative. *State v. McKeever*, 276 N.W.2d 385, 387 (Iowa 1979).

Moore claims the court abused its discretion in this case by relying on a single factor, his criminal history, in determining his sentence. Our review of the record shows the court considered several factors in determining the proper sentence for Moore. In addition to Moore’s history of driving offenses, the court considered his chances of reform by noting that he had been in prison previously

for the same offense, but had continued to drive while barred. The court also noted Moore's character, by noting he was "somebody who just isn't going to pay attention to whatever punishment we give you." Although Moore's specific age was not mentioned, Moore did state that he had grandchildren.

Furthermore, the record shows the court carefully considered Moore's sentencing request. The court checked to see if Moore had paid his fines in the past. The court also stated, "I was really thinking about it"

After considering the transcript of the sentencing hearing, we conclude the court did not abuse its discretion; the court did not merely consider one factor in imposing the sentence in this case. We affirm the decision of the district court.

AFFIRMED.