

IN THE COURT OF APPEALS OF IOWA

No. 9-500 / 09-0060
Filed July 2, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KEITH RAY WILLIAMS,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, J. Hobart Darbyshire,
Judge.

Keith Ray Williams appeals the sentence imposed following his guilty plea.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Thomas J. Gaul, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney
General, Michael J. Walton, County Attorney, and Joseph Grubisich and Jay
Sommers, Assistant County Attorneys, for appellee.

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

DOYLE, J.

Keith Ray Williams appeals his sentence of ten years imprisonment following his guilty plea to one count of delivery of a controlled substance in violation of Iowa Code section 124.401(1)(c)(3) (2007). He contends the district court abused its discretion by imposing a prison term. We affirm.

Originally charged with four counts of delivery of a controlled substance (crack cocaine), Williams pled guilty to one count of delivery of a controlled substance. A presentence investigation was ordered. At sentencing the court rejected Williams's request for probation and sentenced him to prison.

Our review of sentencing decisions is for correction of errors at law. Iowa R. App. P. 6.907; *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). A sentence will not be upset on appeal unless the defendant demonstrates an abuse of district court discretion or a defect in the sentencing procedure. *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000).

Sentencing decisions of the district court are cloaked with a strong presumption in their favor. Where, as here, a defendant does not assert that the imposed sentence is outside the statutory limits, the sentence will be set aside only for an abuse of discretion. An abuse of discretion is found only when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable.

Thomas, 547 N.W.2d at 225 (internal citations omitted). When a sentence is not mandatory, the district court must exercise its discretion in determining what sentence to impose. *Id.* Iowa Rule of Criminal Procedure 2.23(3)(d) requires a sentencing court to demonstrate its exercise of discretion by stating "on the record its reason for selecting the particular sentence." Failure to state on the record the reasons for the sentence imposed requires the sentence be vacated

and the case remanded for amplification of the record and re-sentencing. *State v. Marti*, 290 N.W.2d 570, 589 (Iowa 1980); *State v. Freeman*, 404 N.W.2d 188, 191 (Iowa Ct. App. 1987). The sentencing court, however, is generally not required to give its reasons for rejecting particular sentencing options. *Thomas*, 547 N.W.2d at 225. In considering sentencing options, the court is to determine, in its discretion, which of the authorized sentences will provide both the maximum opportunity for the rehabilitation of the defendant and for the protection of the community from further offenses by the defendant and others. Iowa Code § 901.5; see *State v. Hildebrand*, 280 N.W.2d 393, 395 (Iowa 1979).

Williams argues the court abused its discretion in imposing a prison term. Williams acknowledges that he has a prior criminal and juvenile history, but argues that because he is young, he has a substance abuse problem, he is eligible for a deferred judgment, he has no prior felonies, and he is only four credits short of his high school diploma, the court should have at the very least suspended his sentence and ordered a term of supervised probation. We disagree.

The presentence investigation report reveals Williams's extensive juvenile and adult criminal history, including numerous convictions, probation violations, and punishments including a prior unsuccessful in-home counseling program, a prior unsuccessful substance abuse program, eight months in an Illinois boot camp for juvenile offenders, and three prior suspended sentences imposed following convictions for possession of a controlled substance, assault causing bodily injury, and carrying a concealed weapon. The report also states that Williams sold drugs for income and admitted that he did not look for work.

Additionally, the report states that Williams was making no effort to improve his life or his lifestyle. The report recommended that Williams be incarcerated, stating that the program manager at the Residential Corrections Facility (RCF) determined that Williams was not appropriate for placement at the RCF based on his juvenile criminal record and continued criminal involvement since Williams was last referred to the RCF in 2006.

In setting forth reasons for the sentence imposed, the district court stated:

I have reviewed very carefully the presentence investigation. I note the significant length of both the juvenile and the adult criminal record, record of convictions. [I also] note that while Mr. Williams might be just short of having his high school diploma, he's done absolutely nothing about that for the past almost four years. He [has] no employment history, so he's been doing nothing during that period of time. He has a history that includes assaultive behavior, convictions, weapons, significant substance abuse in both alcohol and other illegal drugs.

Under the "capabilities" section of the presentence investigation, the presentence investigator notes, after thoroughly detailing this lack of doing anything for that period of time, quote: "Mr. Williams has made absolutely no effort to improve his life or lifestyle, and continues to be arrested for possession of illegal drugs."

I can't see anything that . . . would indicate that Mr. Williams is a safe risk to have out on the streets on probation, and that being the case, the court believes that the appropriate alternative is imposition of the sentence to prison.

Based on our review of the entire record, we agree with the district court. Williams was previously granted a continuous series of second chances; yet, he made no effort to change his ways. We conclude the district court considered and weighed numerous, appropriate factors in arriving at a sentence and therefore did not abuse its sentencing discretion.

AFFIRMED.