

IN THE COURT OF APPEALS OF IOWA

No. 9-719 / 09-0300
Filed October 7, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MILTON ANGELO WELLS, JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick (plea hearing) and Mark J. Smith (sentencing), Judges.

Milton Angelo Wells Jr. appeals his sentence following his plea of guilty for sexual abuse in the third degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert Ranschau, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, Michael Walton, County Attorney, and , Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Mansfield, J., and Schechtman, S.J.*

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

SCHECHTMAN, S.J.

Milton Angelo Wells Jr. appeals his sentence following a plea of guilty to sexual abuse in the third degree, in violation of Iowa Code section 709.4(2)(c)(4) (2009), a class C felony. Wells contends the district court abused its discretion in imposing a sentence of confinement not to exceed ten years, alleging that probation would have provided him a “better chance for rehabilitation.” We affirm.

I. Background Facts and Proceedings.

On the afternoon of September 23, 2008, nineteen-year-old Wells encountered the victim, then fourteen, in the Bettendorf Public Library. Wells and the victim were recent acquaintances from high school. They talked. Wells asked the victim to have sex with him upstairs, on the second floor of the library. The victim stated she was “afraid to say no,” and followed Wells upstairs. They kissed and the victim followed Wells into a handicap stall in a restroom.

Urged by Wells, the victim removed her pants and underwear. Wells inserted his penis into her vagina, wearing a condom. Wells asked the victim to perform oral sex on him. She complied. He thereafter resumed intercourse with the victim until he ejaculated. The victim’s cell phone rang. She told Wells her mother had arrived to pick her up. At Wells’ direction, the two exited the restroom and the second floor separately.

Wells was charged and pled guilty to sexual abuse in the third degree, in violation of section 709.4(2)(c)(4). The sentencing hearing was held on February 19, 2009. Wells’ presentence investigation report recommended probation with

supervision by the Sex Offender's Treatment Program. The State did not make a sentencing recommendation, per its plea agreement. Wells requested the court to order probation to allow him a better chance for rehabilitation. In support of that request, he asked the court to consider his age, current and future education, his activity with his church, and his participation in classes at the county jail after arrest that had assisted him with anger management, responsibility, and accountability issues. The sentencing court rejected Wells's request for probation, and sentenced him to a term of incarceration not to exceed ten years, with lifetime parole, pursuant to Iowa Code section 903B.1, once released. Wells now appeals.

II. Scope and Standard of Review.

We review the district court's sentencing decision which is within statutory limits for abuse of discretion. Iowa R. App. P. 6.4; *State v. Alloway*, 707 N.W.2d 582, 584 (Iowa 2006). Sentencing decisions of the district court are cloaked with a strong presumption in their favor. *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). "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.*

III. Merits.

Wells argues the district court abused its discretion in sentencing him to prison, and that probation with supervision would have afforded him a greater chance to achieve rehabilitation. Iowa Rule of Criminal Procedure 2.23(3)(d)

requires a trial court to state on the record its reasons for selecting a particular sentence. In weighing and considering all pertinent matters, 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.” *Formaro*, 638 N.W.2d at 724; 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.

The record reveals that although Wells does not have an extensive criminal history, he does have a prior conviction for a violent crime (assault causing bodily injury), occurring in 2007. For that offense, Wells was given probation, which he did not complete, probation was revoked, and he served 120 days in the county jail. At sentencing, the district court reviewed the presentence investigation report, which contained information regarding Wells’ school and church involvement, work history, age, family dynamics, financial history, living arrangements, and criminal history. The report did not offer any reason for its recommendation of probation. The court also reviewed a letter from a correctional officer detailing Wells’ cooperation and participation in group classes at the jail.

During sentencing, the court noted Wells’ age and potential to be a productive citizen. The court, however, expressed its concern about Wells’ failure to reform after his prior conviction for a violent crime, and his failure to comply with the probation imposed for that offense. As the court stated:

Well, Mr. Wells, I've looked at your Presentence Investigation and also the victim—or the official version, and the problem that I have is that—in part—is that this is not your first offense. This is your second offense of a crime of violence. You had an assault causing bodily injury charge which you failed on probation in . . . 2007. You failed probation in December of 2008, at which time a period of 120 days in jail was imposed.

This is another crime of violence. Sex abuse is a violent crime. And I—based on the facts and circumstances surrounding the events in this case as well as your prior criminal history and the fact that this is a crime of violence again indicates to the Court that a period of incarceration is warranted, and, again, that's something that I'm—I do with reluctance given your age and also the fact that you appear to be an intelligent person. You have a lot to offer if you choose to abide the law. Unfortunately, you've chosen otherwise, and one of my duties as a judge is to protect the community and placing you out of the community is something that I feel will protect the community, so based on those prior statements as to the reasons as well as that reason, the Court will impose a period of incarceration.

We conclude the district court properly considered Wells' chance for rehabilitation, as well as the other appropriate factors, when entering his sentence. The court considered the nature of the offense ("crime of violence"), the attending circumstances ("based on . . . circumstances surrounding the events"), age ("given your age"), character and propensities ("you appear to be an intelligent person. You have a lot to offer if you choose to abide the law"), and chances of reform ("your second offense of a crime of violence . . . a crime of violence again"). *See State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979). The punishment fits the person and the crime. *Id.* It also addresses rehabilitation and the need to protect the community. The court only needed to explain the reasons for its sentence and was not obligated to explain the reasons for rejecting probation. *State v. Ayers*, 590 N.W.2d 25, 28 (Iowa 1999).

The record reflects that the court tersely addressed all the relevant factors, and further reveals the concerns which motivated the court to select the sentence imposed. It is not an abuse of discretion to refuse probation though recommended by the presentence investigation. *State v. Taylor*, 490 N.W.2d 536, 539 (Iowa 1992). Sentencing decisions carry a presumption of regularity. *State v. Jose*, 636 N.W.2d 38, 41 (Iowa 2001). As such, the burden is on the defendant to affirmatively prove the sentencing court relied on improper evidence or otherwise abused or failed to exercise its discretion. *Id.* We conclude Wells has failed to do so. We affirm.

AFFIRMED.