

**IN THE COURT OF APPEALS OF IOWA**

No. 9-805 / 09-0249  
Filed November 12, 2009

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

**vs.**

**CHRISTOPHER LANCE MILLER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Clinton County, Phillip J. Tabor,  
District Associate Judge.

A defendant appeals his sentence for assault causing bodily injury.

**SENTENCE AFFIRMED IN PART AND VACATED IN PART.**

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

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant  
Attorney General, Mike L. Wolf, County Attorney, and Michael Walton, Assistant  
County Attorney, for appellee.

Considered by Vogel, P.J., Mansfield, J., and Nelson, S.J.\*

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

**MANSFIELD, J.**

On December 22, 2008, following a jury trial, Miller was convicted of assault causing bodily injury in violation of Iowa Code sections 708.1 and 708.2 (2007). The victim, a young woman who had previously dated Miller, was speaking with Miller on the landing below her apartment on June 13, 2008. Miller started to make threatening statements. She ran up to her apartment. Miller followed. She tried to close the door. Miller broke through. He slammed her head between the door and the wall. Miller repeatedly punched the victim in the face and body for a couple of minutes. Finally, "he looked at my face and saw what he had done to me and felt horrible about it and that's what made him stop." Miller stood by the door and would not let the victim leave. After about ten minutes, Miller's mother showed up, and after another ten minutes, she persuaded her son to let the victim leave. The victim went to the emergency room. She had a broken nose, split and fat lip, two busted eyes which later turned black, with left eye swelling shut, and lumps and bruises over her head, back, and chest.

On January 13, 2009, the district court sentenced Miller to twelve months in jail and ordered him to pay attorney fees, court costs, and restitution in the amount of \$100 to his victim. Additionally, the district court ordered Miller to complete a batterer's education program. Miller appeals his sentence. He challenges the requirement of participation in a batterer's education program as an illegal sentence. He also contends the district court abused its discretion in relying on a criminal history exhibit and in sentencing him to the maximum term of incarceration.

Our review of a sentence imposed in a criminal case is for correction of errors at law. Iowa R. App. P. 6.907 (2009); *State v. Sailer*, 587 N.W.2d 756, 758 (Iowa 1998). “A sentence must comply with all applicable sentencing statutes [and if] a sentence is not authorized by statute, it is void.” *State v. Manser*, 626 N.W.2d 872, 874 (Iowa Ct. App. 2001). A sentence imposed in accordance with all applicable statutes will not be disturbed on appeal unless the defendant shows an abuse of discretion or a defect in the sentencing procedure, such as the district court’s consideration of impermissible factors. *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). A sentence within the statutory limits is cloaked with a strong presumption in its favor. *Id.* An abuse of discretion will not be found unless the defendant shows that such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000). “In exercising its discretion, the district court is to weigh all pertinent matters in determining a proper sentence including the nature of the offense, the attending circumstances, the defendant’s age, character, and propensities or chances for reform.” *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995) (citations and quotations omitted).

Miller first asserts the district court erred in ordering him to complete a batterer’s education program. Under the facts of the case, a batterer’s education program would have been quite reasonable. However, the State concedes, and we agree, that the district court lacked authority to impose a batterer’s education program on Miller as part of his *sentence* (rather than as a condition of probation). Because Miller was not placed on probation, this portion of the sentence was not authorized by statute. This case is controlled by *Manser*, 626

N.W.2d at 874-75. The inclusion of a batterer's education program in Miller's sentence was outside the statutory limits and void. See *Manser*, 626 N.W.2d at 875. Thus, we vacate the portion of Miller's sentence ordering him to complete the batterer's education program.

Miller next challenges the imposition of a maximum period of incarceration. He asserts the district court improperly considered a one-page exhibit listing Miller's prior convictions and wrongly sentenced the defendant "as if he had been convicted of a domestic assault." We find no merit to either argument. The State's exhibit listed Miller's previous convictions. Miller and his trial counsel were given an opportunity to review the document, corrected a minor error, and did not otherwise object to the exhibit. Except for the minor error that was corrected, Miller does not assert the list was inaccurate. The sentencing court properly considered Miller's lengthy criminal history. See *Sailer*, 587 N.W.2d at 763 (stating an appropriate factor to consider is the defendant's prior convictions). As the court put it, citing the dates of some of Miller's prior convictions:

Your attorney discussed rehabilitation. I believe that perhaps in 1996 rehabilitation was appropriate; I believe probably in 2001 rehabilitation was appropriate; and perhaps in 2006 it was. It's pretty obvious from the testimony that the Court heard in this trial the Court's duty here is to protect the community, and the only protection that the Court sees available to it is to separate you from society, and that's why I've issued the sentence that I have.

See also Iowa Code § 901.5 (stating the sentencing court shall consider the protection of the community from further offenses).

Although Miller asserts the district court impermissibly imposed sentence as if he had been convicted of domestic assault, a "sentencing court may look to

the facts and circumstances surrounding the crime” in determining the appropriate sentence. *Manser*, 626 N.W.2d at 874; see *Formaro*, 638 N.W.2d at 724 (stating a sentencing court shall consider the nature of the offense). Nothing in the record indicates the district court considered any improper factors. See *Formaro*, 638 N.W.2d at 725 (“We will not draw an inference of improper sentencing considerations which are not apparent from the record.”). To the contrary, the district court appropriately considered the nature of Miller’s brutal assault on his victim, as described in the witness testimony and as illustrated in the photographs of her after the beating, as well as Miller’s substantial criminal history. Thus, Miller’s arguments regarding the maximum period of incarceration and improper sentencing factors must fail.

We vacate the portion of Miller’s sentence ordering him to complete a batterer’s education program. We affirm the remainder of his sentence.

**SENTENCE AFFIRMED IN PART AND VACATED IN PART.**