

IN THE COURT OF APPEALS OF IOWA

No. 1-553 / 10-1655
Filed July 27, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRYCE JAMES MCAVINEW,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Margaret Lingreen (trial) and Thomas N. Bower (sentencing), Judges.

Defendant appeals his sentence for possession of methamphetamine, third offense, and being a habitual offender. **SENTENCE VACATED AND REMANDED FOR RESENTENCING.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Mullins, JJ.

MULLINS, J.

Bryce McAviney was convicted of possession of methamphetamine, third offense, and being a habitual offender, in violation of Iowa Code sections 124.401(5), 902.8, and 902.9 (2009). At the sentencing hearing, the State recommended a fifteen-year prison sentence with a three-year mandatory minimum. Defendant requested a suspended sentence. The district court ordered defendant to serve a term of imprisonment not to exceed fifteen years, with a three-year minimum.¹

McAviney appeals his sentence. We review a sentencing decision for an abuse of discretion. *State v. Evans*, 672 N.W.2d 328, 331 (Iowa 2003). Iowa Code section 901.5 requires a sentencing court to exercise discretion to determine an appropriate sentence. 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). In applying its discretion the court should weigh and consider all pertinent matters in determining a proper sentence, including the nature of the offense, the attending circumstances, defendant's age, character and propensity and chances for reform. *State v. Laffey*, 600 N.W.2d 57, 62 (Iowa 1999).

The district court demonstrates the exercise of its discretion by stating the reasons for the sentence on the record. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). Under Iowa Rule of Criminal Procedure 2.23(3)(d) the court must

¹ The district court retained jurisdiction of defendant's case. The court determined that when defendant was discharged from parole in a different case, the court would consider a motion for reconsideration of sentence, with the possibility that defendant would be placed in drug court.

“state on the record, its reason for selecting the particular sentence.” A court is not required to give a detailed explanation, but it must give at least a cursory explanation to facilitate appellate review of the court’s discretionary action. *State v. Oliver*, 588 N.W.2d 412, 414 (Iowa 1998).

McAvinew claims the district court did not give sufficient reasons for his sentence. Although the district court gave several reasons for retaining jurisdiction in this case in order to allow defendant to file a motion for reconsideration of sentence, it did not state on the record any reasons for declining to suspend the prison term that it imposed. See Iowa R. Crim. P. 2.23(3)(d).² We conclude defendant’s sentence must be reversed and the matter remanded to the district court for resentencing.

SENTENCE VACATED AND REMANDED FOR RESENTENCING.

² Iowa Code section 908.10 requires that when a parolee is convicted of a felony committed while on parole, “the new sentence of imprisonment . . . shall be served consecutively with the term imposed for the parole violation, unless a concurrent term of imprisonment is ordered by the court.” In this case the judgment of guilty and sentence order filed August 30, 2011, states that the sentence is “concurrent with parole,” but the record at the sentencing hearing makes no reference to the court’s exercise of discretion on that issue.