IN THE COURT OF APPEALS OF IOWA

No. 1-767 / 11-0428
Filed October 19, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ASHLEY DAWN CHIPMAN RINGOLD,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, Mark Kruse, District Associate Judge.

Defendant appeals the district court's refusal to grant her a deferred judgment on her conviction for violating the pseudoephedrine sale restriction. **AFFIRMED**.

Scott E. Schroeder of Schroeder Law Office, Burlington, for appellant.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Tyrone Rogers, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., Danilson, J., and Schechtman S.J.*

Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

SCHECHTMAN, S.J.

Ashley Ringold was charged with purchasing more than 7500 milligrams of pseudoephedrine, within a thirty-day period, in violation of Iowa Code section 124.213 (2009),[1] a serious misdemeanor. She entered a written plea of guilty. As a part of the factual basis, she admitted the purchase of 8160 milligrams of pseudoephedrine, within a thirty day interval. The court accepted the plea.

At the sentencing hearing, Ringold requested a deferred judgment. She testified that she had purchased cold medication for multiple people, including her aunt, grandmother, and boyfriend.

The court sentenced Ringold to thirty days in jail, all suspended except five days, and assessed a fine of $315, plus court costs and surcharges (the State's recommendations). The court labeled the subject offense as being "very, very serious because of the nature of what they are used for." The court added:

> Again, the reasons for the sentence, ma'am, are the excess of 7500 milligrams of pseudoephedrine purchased in a pretty short period of time; and I consider this a very serious offense because of the effects it has and risking other people in the community and throughout the State.

Ringold appeals the court's denial of her request for a deferred judgment.[2]

We review sentences imposed in criminal cases for the correction of errors at law. *State v. Hennings*, 791 N.W.2d 828, 833 (Iowa 2010). "We will not reverse the decision of the district court absent an abuse of discretion or some defect in the sentencing procedure." *State v. Formaro*, 638 N.W.2d 720, 724

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[1] The statute applies if a person has purchased the pseudoephedrine from a pharmacy, in violation of section 124.212(4)(c), or from a retailer, in violation of section 126.23A(2)(b).

[2] The offense and the defendant did qualify for a deferred judgment pursuant to Iowa Code section 907.3 (2009).

(Iowa 2002). There is an abuse of discretion when the district court decision was exercised on grounds or for reasons that were clearly untenable or unreasonable. *State v. Bentley*, 757 N.W.2d 257, 262 (Iowa 2008). It is Ringold's burden to show an abuse of discretion. *State v. Loyd,* 530 N.W.2d 708, 713 (Iowa 1995).

Ringold claims the district court had a blanket policy of refusing to grant a deferred judgment to anyone adjudicated guilty of violating the pseudoephedrine sale restriction. She asserts the court's remarks show that it connected this offense with the offense of manufacture of methamphetamine. She points out there is no evidence connecting her with the latter, a felony.

Ringold is correct in her assertion that a sentencing court must engage in an independent consideration in each case and not use a fixed policy. *See State v. Hager*, 630 N.W.2d 828, 834 (Iowa 2001). "The court is not permitted to arbitrarily establish a fixed policy to govern every case, as that is the exact antithesis of discretion." *State v. Jackson*, 204 N.W.2d 915, 916 (Iowa 1973).

The record in this case, however, does not contain any indication that the court employed a blanket policy to refuse a deferred judgment to those convicted of violating the pseudoephedrine sale restriction. The court did consider the nature of the offense and its impelling danger to others.[3]

The court commented that the present offense could be charged as a class D felony, if the circumstances were right. Ringold infers this remark refers to possession of pseudoephedrine with intent to manufacture a controlled

[3] The court did delay the time for serving the sentence about six months as Ringold was expecting a child in about one and one-half months after the sentencing date.

substance, in violation of section 124.401(4). The court did not state or infer that it believed Ringold had the intent to manufacture a controlled substance, such as methamphetamine. The court merely stated, that under different circumstances, the possession of pseudoephedrine could be a class D felony. We do not believe that observation leads to a conclusion that the sentencing court had a blanket policy of refusing a deferred judgment for those committing this offense. There is no evidence that this court had previously sentenced anyone for this offense or a related offense. Nor was it demonstrated the existence of a "general order" to be employed for these types of offenses. *Jackson,* 204 N.W.2d at 916. "We will not draw an inference of improper sentencing considerations which are not apparent from the record." *Formaro,* 638 N.W.2d at 725.

Although the court is accused of giving but a cursory statement of its reasons for Ringold's sentence, we conclude the court did not abuse its discretion by denying the request for a deferred judgment. *See Hennings*, 791 N.W.2d at 838. A court is not required to enumerate its reasons for rejecting particular sentencing options. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). When a sentence is within the statutory limits, there is a strong presumption in its favor. *Formaro*, 638 N.W.2d at 724. "[O]ur task on appeal is not to second-guess the decision made by the district court, but to determine if it was unreasonable or based on untenable grounds." *Id*. at 725. It was neither.

We affirm the decision of the district court.

AFFIRMED.