IN THE COURT OF APPEALS OF IOWA

No. 1-770 / 11-0579
Filed December 7, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KYLE JORDAN McDOWELL,
Defendant-Appellant.

Appeal from the Iowa District Court for Story County, Steven P. Van Marel, District Associate Judge.

Defendant appeals the sentence imposed following his guilty plea. **AFFIRMED.**

Gerald B. Feuerhelm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, Stephen Holmes, County Attorney, and Travis Johnson, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Doyle and Mullins, JJ.

EISENHAUER, P.J.

In the early morning hours of October 10, 2010, defendant Kyle McDowell's high-school-aged brother called McDowell and stated he had been injured at an ISU fraternity party. McDowell arrived at the party, saw his injured brother, picked up a two-by-four, approached a group of people attending the party, and used the board to hit the victim twice. Subsequently, the victim underwent hand surgery.

In February 2011, McDowell entered a written plea of guilty to aggravated assault with intent to inflict serious injury. McDowell acknowledged "that by pleading guilty the prosecuting attorney will recommend" deferred judgment, $625 civil penalty, costs and fees, probation, restitution, substance abuse evaluation, anger management class, and a five-year no-contact order with the victim. Additionally, the State agreed to dismiss all companion simple misdemeanor offenses. The court accepted McDowell's guilty plea.

At the April 2011 sentencing hearing, the State and McDowell requested sentencing in accordance with the plea agreement. The court rejected the deferred judgment recommendation and adjudged McDowell guilty of assault under Iowa Code sections 708.1(1), 708.1(2), and 708.2(1) (2009). The court ordered McDowell to serve one year in jail, suspended all but ten days, and allowed McDowell sixty days to complete his ten days.

Citing *State v. Lara*, 580 N.W.2d 783, 785 (Iowa 1998), McDowell appeals and argues the sentence is unconstitutional because it is excessive and a disproportionate punishment to the offense charged in his particular circumstances—no prior criminal history, academic accomplishments, impending

professional success, and his cooperation with the police investigation. McDowell also stresses both the State and the victim agreed to a deferred judgment. McDowell notes "there is no mandatory minimum sentence of jail time" and the maximum sentence is two years of imprisonment. We review de novo. *Lara*, 580 N.W.2d at 784.

In *Lara*, the Iowa Supreme Court recognized a punishment may be unconstitutional when it is "so excessively severe that it is disproportionate to the offense charged." *Id*. at 785 (quoting *State v. Robbins*, 257 N.W.2d 63, 68 (Iowa 1977)). However, "[s]ubstantial deference is afforded to the legislature in setting the penalty for crimes." *Id*.

We first "look at the crime committed and the sentence imposed." *Id*. McDowell's assault crime, by its nature, is a crime with a high risk of serious injury. Here, after McDowell's attack using a board, the victim was, in fact, injured and needed surgery. In McDowell's particular circumstances, a suspended one-year jail term with ten days served "does not lead to an inference of gross disproportionality." *See id*. Accordingly, we affirm the sentence imposed by the district court.

AFFIRMED.