IN THE COURT OF APPEALS OF IOWA

No. 2-1090 / 12-0783
Filed January 9, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMES EARL MCKINNEY,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark J. Smith (guilty plea) and Thomas G. Reidel (sentencing), Judges.

James McKinney appeals from the sentence imposed by the district court following his guilty plea to the charge of conspiracy to commit a non-forcible felony. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Michael J. Walton, County Attorney, and Melisa K. Zaehringer and Joseph A. Grubisich, Assistant County Attorneys, for appellee.

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

DOYLE, P.J.

James McKinney appeals from the sentence imposed by the district court following his guilty plea to the charge of conspiracy to commit a non-forcible felony, in violation of Iowa Code section 706.3 (2011). McKinney contends the district court abused its discretion by sentencing him to prison. *See State v. Bentley*, 757 N.W.2d 257, 262 (Iowa 2008) ("The decision of the district court to impose a particular sentence within the statutory limits is cloaked with a strong presumption in its favor, and will only be overturned for an abuse of discretion . . . .").

McKinney argues he should have been sentenced to a period of supervised probation, pointing to his young age (eighteen at the time of the offense), his receipt of a GED and acceptance to Black Hawk College, and his employment by a family member as well as his holding of a number of temporary jobs. He also notes the presentence investigation report recommended supervised probation.

In sentencing McKinney to a term of imprisonment not to exceed five years, the court explained:

> [M]y duty under the law is to review what is available to me in terms of community resources and to determine what the appropriate rehabilitative plan for you would be, but to also consider that the public must be protected. In doing so, I look at the seriousness of the crime, the effect this crime has upon members of the community, your willingness to accept change and treatment, and what is available in this community to assist you in that process. In this entire thought process, I look at the least restrictive alternatives first and then proceed to the more restrictive alternatives.
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> I have reviewed the presentence investigation report and have considered the information therein. I've also made all of the additions your attorney has requested and have taken those to be

accurate. I've not given any consideration to any entries in the criminal history section that do not show an admission or adjudication of guilt.

The court notes in this matter that you have a prior felony that you're on probation for in the State of Illinois for manufacturing and delivery of a controlled substance. According to the presentence investigation report, you received that sentence on March 24, 2011. At that time the State of Illinois gave you an opportunity to show that you could be successful with community-based rehabilitation. It also gives the court in this case an opportunity to look and see what your true willingness is to accept change and treatment. The court finds that that willingness is very minimal.

Since the time of your arrest and sentence in Illinois, you have not obtained a substance abuse evaluation. There have been seven months since you were arrested for this offense, and you have not been able to find time to get in and get an evaluation and treatment at [the Center for Alcohol and Drug Services (CADS)]. The presentence investigation report says you were screened by [CADS] on November 14, 2011, so you got in for the evaluation, and it was recommended at that time that you complete extended outpatient treatment. However, you put off contacting CADS to schedule an intake for some time, but ultimately, it was decided that you would appear for an intake appointment on March 12, 2012. And yet, once again, you failed to show or call on that date and had no further contact with CADS. That tells me that you don't have any willingness to accept treatment from a community-based resource.

Additionally, even though you were on probation in . . . Illinois and you had these charges pending, you have continued to smoke marijuana. Page six of the presentence investigation [states]: "[McKinney] said he first used marijuana at the age of fourteen or fifteen. He reported his last use was a couple of weeks before being interviewed for this investigation. He advised that he was a daily smoker until about the end of January 2012," January 2012 being approximately three and a half months after you had been arrested on these current charges and ten months after you had been convicted and placed on probation for similar charges. That also tells me you're not willing to accept change and treatment or abide by reasonable rules of probation.

The court also notes that you have minimal to nonexistent employment history. The court does note with favor though that you did obtain a GED in 2010, which shows that you have the potential to be self-motivated to better yourself.

Upon our review, we find the reasons given by the sentencing court comport with the pertinent statute and case law. *See* Iowa Code § 901.5 (requiring a court to decide, in its discretion, which authorized sentence "will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others"); *see also State v*. *Leckington*, 713 N.W.2d 208, 216 (Iowa 2006) (stating that in exercising its discretion, the district court is to weigh and "consider 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. . . . The punishment should fit both the crime and the individual."). Although McKinney is a young, employed man, and although the presentencing investigation report recommended supervised probation, we cannot conclude the district court's decision was unreasonable or based on untenable grounds. *See Bentley*, 757 N.W.2d at 262. Accordingly, we affirm McKinney's judgment and sentence.

AFFIRMED.