

IN THE COURT OF APPEALS OF IOWA

No. 2-1196 / 12-0968
Filed February 13, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

FLOYD RICHARD BROOKS,
Defendant-Appellant.

Appeal from the Iowa District Court for Appanoose County, Kirk A. Dailey,
District Associate Judge.

Floyd Richard Brooks appeals the sentence imposed after he pleaded
guilty to possession of a schedule II controlled substance (methamphetamine)
(enhanced). **AFFIRMED.**

Monte M. McCoy, Centerville, for appellant.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant
Attorney General, and Richard F. Scott, County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

Floyd Richard Brooks pleaded guilty to possession of a schedule II controlled substance (methamphetamine) (enhanced) on January 6, 2012. The State agreed to dismiss two other counts with which Brooks was charged and to recommend probation “pending Mr. Brooks’ good behavior.” The State changed its recommendation to incarceration at the sentencing hearing on the basis of new charges against Brooks and continuing use of methamphetamine.

At the April 27 sentencing hearing, Brooks did not object to the information in the presentence investigation (PSI) report, which noted Brooks had new criminal charges since his guilty plea and “has continued to possess the substance [methamphetamine] and admitted to using the substance as recently as March 24, 2012.” The presentence recommendation was that Brooks “be sentenced to the Director of Adult Corrections . . . and said sentence not be suspended.” An April 3 substance abuse evaluation, which was attached to the PSI report, stated that Brooks met the criteria for marijuana and amphetamine abuse and recommended extended outpatient care.

The prosecutor noted Brooks’s continuing criminal activity pending sentencing and stated, “[I]t’s in the best interests of society as well as for the rehabilitation of the defendant that he be sentenced to a term of incarceration not exceed five years.” Defense counsel asked the court “to follow the original agreement at plea proceedings.” The prosecutor responded,

Your Honor, I would also like to note, I believe at the plea hearing it was discussed that Mr. Brooks would—the quote-unquote original agreement would be followed as long as Mr. Brooks incurred no new troubles with the law. I believe the court noted it

was up to Mr. Brooks and his continued good behavior on what his sentence would be.

Brooks then made a statement in which he apologized to the county attorney, his attorney, and his father. He also stated, “I am sorry I have an addiction but I am trying to turn my life around today.”

The district court sentenced Brooks to a term of incarceration not to exceed five years, with credit for time served, but suspended the sentence, placed Brooks on probation, and ordered him to reside at a residential facility. The court acknowledged Brooks’s “problem with substance abuse” and observed that Brooks had not previously been given the opportunity to go to a “halfway house.” The court opined that “the treatment you can get through the halfway house, the supervision it will provide, can give you the opportunity to break the addiction you have.” The court noted, “I don’t believe straight probation would be sufficient to do that, given your continued use of narcotics.” The court noted the sentence “doesn’t resolve your other outstanding felony charge.”

On appeal, Brooks contends the prosecutor breached the plea agreement, the court considered improper factors in sentencing, and defense counsel was ineffective. We affirm.

The purported breach of the plea agreement—that the prosecutor did not recommend probation—was not applicable because Brooks had failed to maintain “good behavior.”

We also reject the contention that the district court considered improper factors. See *State v. Bentley*, 757 N.W.2d 257, 266 (Iowa 2008) (“Generally, courts may consider a variety of factors to justify the imposition of a sentence,

including rehabilitation of the defendant, protection of the community from further offenses by the defendant and others, Iowa Code § 901.5, the defendant's age and criminal history, the defendant's employment and family circumstances, the nature of the offense, and 'such other factors as are appropriate.' Iowa Code § 907.5."). "[T]he 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 or the consideration of inappropriate matters." *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). Abuse of discretion occurs only when "the decision was exercised on grounds or for reasons that were clearly untenable or unreasonable." *Id.* Brooks acknowledged his addiction. The court's comment about the pending felony charge simply informed Brooks that the sentence did not resolve that charge; there is no indication the court considered the pending charge as an impermissible factor in the choice of sentence. Brooks received a suspended sentence, although a period of time at a residential facility was a term of probation. We find no abuse of discretion.

We preserve Brooks's claim of ineffective assistance of counsel for possible postconviction relief proceedings. See *State v. Clark*, 814 N.W.2d 551, 567 (Iowa 2012) ("In this case, any arguments on the subject of ineffective assistance of counsel have been raised in 'a general or conclusory manner.' For this reason, the record is not sufficient for us to address them. We therefore leave them to be determined in a possible postconviction relief proceeding." (citation omitted)).

AFFIRMED.