

**IN THE COURT OF APPEALS OF IOWA**

No. 3-750 / 12-1690  
Filed August 21, 2013

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**JEFFREY PAUL FREE,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Joseph M. Moothart, District Associate Judge.

A defendant appeals the sentence imposed following his conviction for operating while intoxicated. **AFFIRMED.**

Michael M. Pedersen, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Adam Kenworthy, Legal Intern, Thomas J. Ferguson, County Attorney, and Jeremy Westendorf, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

**VOGEL, P.J.**

Jeffrey Free appeals the sentence imposed following his guilty plea to operating while intoxicated (OWI), third or subsequent offense, in violation of Iowa Code section 321J.2(2)(c) (2011). He claims the district court failed to articulate the reasons for the sentence imposed and should have granted him a three-month delay in his incarceration. In sentencing Free, the district court stated:

I'm considering the nature of the offense. Fortunately there was no accident involved, but we do have, as indicated by [the prosecutor], a relatively high chemical test. I'm considering your age; your, in effect, family circumstances, the fact that you're engaged; that you have a residence in Emmetsburg. I'm considering the vote of confidence from [your employer] even though he acknowledges that they would attempt to hold your job open if you're gone for a couple months, but in general I'm considering it to be a positive factor that you not only have a job, but you have an employer who's willing to stand by you even though you have legal difficulties.

I'm considering your employment status, and I respect the field you're in and the position that you have, and I'm familiar with the field of electricians, particularly in this area, and I know a lot of them, and I respect your employment, your position. I'm considering the recommendation contained in the PSI and that made by the State.

Obviously the biggest negative factor is your prior criminal history, and I'm not going to go through all the specifics, but as pointed out by [the prosecutor], you have seven prior OWIs, and it looks like you have three prior OWI thirds. . . .

. . . .

. . . If you've got that many prior OWIs, and you've got at least two prior OWI thirds, and you're not eligible for direct placement in the 321J program, I think it's appropriate that we send you to prison at least for a short-term placement before you can go back into a 321J program.

The court sentenced Free to incarceration not to exceed five years and for placement on the OWI continuum, in addition to the applicable fines, surcharges, and costs. Free's counsel asked the court to withhold imposition of the sentence

for ninety days so Free could assist his employer through the season or to delay imposition until Free was able to become eligible for benefits through his job.

The court denied the requests but granted Free a week to get his affairs in order.

In denying the request the court stated,

I think the State's resistance is well founded based on the number of prior convictions including the number of convictions for OWI third offense. And the reasons for my sentence are primarily focused on protection of the community from further offenses so in that respect I am in agreement with [the prosecutor].

....

That's about the best I'm willing to do with his record. I understand that there may be loss of benefits by not extending it into October, but that's all I'm willing to do. . . .

....

. . . I'll be blunt about it. We need to get you off the streets and get you into more intensive programming even than the outpatient that you've already been through to avoid another incident where you or others are going to be at serious risk. I mean, I'll be blunt about it. That's my concern, that's the State's concern, that's the reason you're going to Oakdale.

We find no abuse of the district court's discretion when it ordered the imposition of the sentence to be delayed by only a week instead of thirty or ninety days as requested by Free's attorney. See *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996) (providing the court is generally not required to give its reasons for rejecting particular sentencing options). We also find the district court adequately articulated on the record the reasons for the sentence imposed. Our courts have held even "terse and succinct" statements made by the sentencing court are adequate so long as we can still review the district court's exercise of discretion. See *State v. Hennings*, 791 N.W.2d 828, 838 (Iowa 2010). The statements made by the district court in this case are forthright but thorough. We

find no abuse of discretion. We therefore affirm Free's conviction and sentence.

**AFFIRMED.**