IN THE COURT OF APPEALS OF IOWA

No. 3-774 / 13-0181
Filed October 23, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TAYLOR MARIE TURNER,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, William A. Price, District Associate Judge.

Defendant appeals the sentence imposed by the district court after revocation of her deferred judgment and probation. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, John P. Sarcone, County Attorney, and Justin G. Allen, Assistant County Attorney, for appellee.

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

BOWER, J.

In February 2012 Taylor Turner was charged with second-degree theft. In March 2012 she entered a plea of guilty to third-degree theft with an offense date of May 5, 2011. *See* Iowa Code § 714 (2011). The district court granted Turner a deferred judgment and placed her on probation for a period of two years.

In May 2012 the State filed a report of probation violation alleging Turner had been arrested for driving while barred, and she had failed to contact her probation officer after being arrested. The State listed two offenses occurring in 2011 and noted the court's deferred judgments: 5/5/2011 third-degree theft (probation ending March 29, 2014), and November 11, 2011 fifth-degree theft (probation ending November 28, 2012).

The court's June 2012 order encompassing both 2011 offenses noted Turner's new driving-while-barred charge and continued the hearing to July. The court also ordered Turner to enter into a county attorney payment plan and have proof of a plan at the next hearing. Second, Turner "shall pay $275.00 supervision fee in full by [the] next hearing."

The July hearing on both cases was continued to August. The July order again required Turner "to enter into a county attorney payment plan and provide proof" at the next hearing and "to pay towards supervision fee as well."

The August hearing on both cases was continued until September 26, 2012. Also in August, Turner entered into a payment plan and agreed to pay fifty dollars each month, beginning September 21, 2012, until $11,660.05 is paid to the clerk of court.

The September hearing on both cases was continued to December 2012. The court ordered Turner's probation on the fifth-degree theft charge extended to November 28, 2013 and ordered her to "keep making payments."

At the end of December 2012, Turner stipulated she violated her probations by (1) using THC two weeks ago, (2) failing to make reasonable efforts to pay the supervision fee, (3) failing to make reasonable attempts to pay victim restitution despite an ability to pay, and (4) entering a plea of guilty to driving while barred in October 2012. The district court revoked Turner's deferred judgments, imposed concurrent jail sentences of ninety days and ten days, ordered a substance abuse evaluation, and assessed fines plus a surcharge and court costs.

Turner now appeals the sentence imposed on the third-degree theft charge and argues the sentencing court's use of a boilerplate checklist, without more, constitutes a failure of the court to give adequate reasons for the sentence imposed. She seeks a remand for resentencing.

"We review the record to determine if the district court abused its discretion in failing to state reasons for the sentence imposed." *State v. Mudra*, 532 N.W.2d 765, 766 (Iowa 1995). It is undisputed Turner appeared at the December hearing and the hearing was unreported. The court's order does not indicate Turner waived reporting. The only record for us to review is the court's written order—the court checked items on a preprinted form. The court selected the following factors: "Defendant's age and character"; "The nature and circumstances of the crimes"; and, "Defendant's criminal history."

Iowa Rule of Criminal Procedure 2.23(3)(d) requires a trial court to state on the record its reasons for selecting a particular sentence. "Although the explanation need not be detailed, at least a cursory explanation must be provided to allow appellate review of the trial court's discretionary action." *State v. Oliver*, 588 N.W.2d 412, 414 (Iowa 1998). Our supreme court has ruled the vague and generalized considerations that inform every sentencing decision and fail to provide a rationale relating to *this* offense and *this* defendant's background are "insufficient to reveal" the court's "exercise of discretion." *See State v Lumadue*, 622 N.W.2d 302, 304 (Iowa 2001) (ruling a pre-printed, boilerplate "Prison Order" stating, "this sentence will provide reasonable protection of the public [and] [p]robation is denied because it is unwarranted," is insufficient to satisfy the "on-the-record requirement").

However, our supreme court also recognizes the sentencing court may state its "on-the-record" reasons orally during the course of the hearing. *State v. Alloway*, 707 N.W.2d 582, 584-86 (Iowa 2006), *overruled on other grounds by State v. Johnson*, 784 N.W.2d 192, 198 (Iowa 2010). Second, it is Turner's obligation to provide us with a record affirmatively disclosing the error relied upon. *See id*. Finally, it is well-established a criminal defendant can create a record by means of a bill of exceptions under Iowa Rule of Criminal Procedure 2.25 after sentencing or by filing a supplemental statement of the record under Iowa Rule of Appellate Procedure 6.806 after an appeal has been filed. *See id*. (ruling defendant's failure to produce a record under rule 2.25 or rule 6.806 "serves as a waiver" of any argument "the district court erred by failing to state its

reasons for the sentence imposed on the record"); *see also State v. Mudra*, 532 N.W.2d 765, 767 (Iowa 1995) (ruling the "lack of record on this appeal [of the sentence imposed] is [the defendant's] own doing" when, "having decided to appeal, he made no attempt to make a record of the district court's [non-transcribed] proceedings under" our rules).

We likewise conclude Turner waived her claim of sentencing error by her failure to provide us with a record of the sentencing hearing under our rules. *See Mudra*, 532 N.W.2d at 767. Accordingly, we affirm the sentence and judgment of the district court.

AFFIRMED.