

**IN THE COURT OF APPEALS OF IOWA**

No. 3-804 / 12-2285  
Filed September 5, 2013

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

**vs.**

**BYRON JUAQUIN WILLIAMS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Michael D. Huppert,  
Judge.

Defendant appeals the sentence imposed upon his guilty plea to  
possession of a controlled substance (marijuana), third offense as a habitual  
offender. **AFFIRMED.**

Benjamin Bergman of Parrish, Kruidenier, Dunn, Boles, Gribble, Gentry &  
Fisher, L.L.P., Des Moines, for appellant.

Byron Williams, Fort Dodge, appellant pro se.

Thomas J. Miller, Attorney General, Jean Pettinger, Assistant Attorney  
General, John Sarcone, County Attorney, and Joseph Crisp and Andrea  
Petrovich, Assistant County Attorneys, for appellee.

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

**DANILSON, J.**

Byron Williams appeals the sentence imposed upon his guilty plea to possession of a controlled substance (marijuana), third offense as a habitual offender, in violation of Iowa Code sections 124.401(5) and 902.8 (2011). He contends the district court abused its discretion by failing to consider all relevant factors when sentencing him to an indeterminate term of fifteen years of incarceration. He asks that we vacate his sentence and remand for resentencing. Because we conclude the district court did not abuse its discretion, we affirm.

**I. Background Facts and Proceedings.**

On November 2, 2011, the State filed a trial information charging Williams with possession of a controlled substance (marijuana), third offense as a habitual offender, a “D” felony. He initially entered a plea of not guilty. He later failed to appear for a pretrial conference and, as a result, the court issued a warrant for his arrest on December 16, 2011.

On March 16, 2012, Williams withdrew his previous plea and pled guilty to the charged offense. The court ordered a pre-sentence investigation (PSI) report and set sentencing to follow.

On May 8, 2012, the court sentenced Williams to an indeterminate term of incarceration not to exceed fifteen years with a minimum of three years to be served before the possibility of parole, as recommended by the State. Williams had requested probation from the court and expressed willingness to enter an

inpatient drug rehabilitation program if it was given. As an explanation for the sentence, the court stated:

Taking into account the contents of that [PSI] report and application of the appropriate statutory factors, most notably the defendant's age, his extensive criminal history, which includes multiple failed opportunities at community supervision while on probation and the other misconduct charges that are catalogued in the report, both at the previous stay, apparently, at the Fort Des Moines Residential Correctional Facility and previously having been in the custody of the Department of Corrections, the court believes that the only appropriate disposition at this time is to adopt the State's recommendation for incarceration.

The court is not convinced, at this time, Mr. Williams, that you have shown sufficient progress in any claimed rehabilitation to afford you further opportunities at this time to pursue that course, and the Court is thoroughly convinced that if allowed to remain at liberty within the community, that you would be a substantial risk to the public for the consequences of additional criminal activity.

The court provided further explanation in the sentencing order. It states, in pertinent part:

Granting probation in this matter is denied because probation would not provide reasonable protection of the public and maximum opportunity for rehabilitation for the defendant. The court has further considered the age of the defendant, as well as the defendant's prior criminal record, and that probation would lessen the seriousness of the offense.

Williams failed to file a notice of appeal within thirty days of sentencing as required by Iowa Rule of Appellate Procedure 6.101. However, on June 7, 2012, he filed an informational notice of appeal to the Iowa Supreme Court. The supreme court accepted the filing as an application for delayed appeal and granted it. The court then transferred the case to the court of appeals.

## II. Standard of Review.

Our review is for correction of errors at law. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). The decision to impose a sentence within statutory limits is “cloaked with a strong presumption in its favor.” *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). The sentence will not be upset on appeal “unless the defendant demonstrates an abuse of trial court discretion or a defect in the sentencing procedure.” *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000). An abuse of discretion is found only when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Thomas*, 547 N.W.2d at 225. We review both the court’s stated reasons made at the sentencing hearing and its written sentencing order. See *State v. Lumadue*, 622 N.W.2d 302, 304 (Iowa 2001).

## III. Discussion.

On appeal Williams contends the district court abused its discretion by failing to consider all pertinent factors when sentencing him to an indeterminate term of fifteen years, rather than granting him a suspended sentence. See *State v. Cooley*, 587 N.W.2d 752, 754–55 (Iowa 1998) (“The trial court . . . should weigh and consider all pertinent matters in determining proper sentence, including the nature of the offense, the attending circumstances, defendant’s age, character and propensities and chances for reform.”). He contends the court focused “exclusively” on his age and prior criminal history, thereby failing to consider his employment and family circumstances, substance abuse history and treatment options, and the nature of the offense committed.

In this case the court determined probation was not appropriate for Williams after “[t]aking into account the contents of that [PSI] report and application of the appropriate statutory factors, most notably the defendant’s age, [and] his extensive criminal history, which includes multiple failed opportunities at community supervision while on probation and the other misconduct charges that are catalogued in the report . . .” However, nothing on the record indicates that his age and criminal history were the *only* factors considered by the court. The court is not “required to specifically acknowledge each claim of mitigation urged by a defendant.” *State v. Boltz*, 542 N.W.2d 9, 11 (Iowa Ct. App. 1995). Furthermore, “the failure to acknowledge a particular sentencing circumstance does not mean it was not considered.” *Id.*

By stating that Williams’s age and criminal history were the “most notabl[e]” factors, the court implied it had, in fact, considered other factors but found them to be less persuasive. Furthermore, the court did not simply reference Williams’s criminal history but noted that Williams had prior failed opportunities at probation.

In the written sentencing order, the court also stated, “Granting probation in this matter is denied because probation would not provide reasonable protection of the public and maximum opportunity for rehabilitation for the defendant.” Thus, the court also considered both the protection of the public and the best chance of rehabilitation when determining the appropriate sentence for Williams. See Iowa Code § 901.5 (“The court shall determine which combination of [sentencing options] is authorized by law for the offense, and of the authorized

sentences, which of them or which combination of them, in the discretion of the court, *will provide the maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.*") (emphasis added).

Williams also argues that the sentence given by the court indicates that it placed too much weight on his criminal history and not enough on the matters that reflected positively on him. He insists the court's indeterminate sentence of fifteen years, while within the statutory limits, is proof of such an abuse of discretion. Williams cites his employment and family circumstances, substance abuse history and treatment options, and the nature of the offense committed as positives that were not properly considered by the court. We cannot agree. Although Williams argues that he had a close relationship with his family members and would have been able to reside with them if placed on probation, he had the opportunity multiple other times. In fact, he was living with one of his family members—his brother—at the time of his most recent arrest. Williams also argues that he had a chance to be employed at McDonalds if given probation by the court. However, during the PSI, Williams admitted employment has not created stability in his life in the past, as the longest he had ever held a job was three months. Williams also notes that he was eligible for inpatient drug treatment. Again, this was an opportunity that had long been afforded to Williams and one that he had not chosen to pursue. Finally, Williams claims the nature of the offense was a positive that should have been considered by the court. He maintains that a "mere possession of marijuana, a nonviolent crime,"

warrants probation rather than incarceration. However, this was Williams' third such offense. Furthermore, he has a lengthy criminal record, both as a juvenile and an adult, and has been granted probation, only to have it revoked for later misconduct, on three separate occasions.

After reviewing the record, we conclude the district court did consider all pertinent factors before sentencing Williams. Because we cannot say the district court abused its discretion, we affirm.

**AFFIRMED.**