

IN THE COURT OF APPEALS OF IOWA

No. 2-865 / 12-0045
Filed October 31, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRANDON JOSEPH SOUSA,
Defendant-Appellant.

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

Brandon Sousa contends the district court abused its discretion in
revoking his deferred judgment. **AFFIRMED.**

Nicholas A. Bailey of Bailey Law Firm, P.L.L.C., Mitchellville, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney
General, John Sarcone, County Attorney, and Brendan Greiner, Assistant County
Attorney, for appellee.

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

POTTERFIELD, J.

Brandon Sousa pleaded guilty to possession of a controlled substance (marijuana, first offense) on April 21, 2011. The court granted a deferred judgment and placed Sousa on probation for one year on that same date. The terms of his probation included obeying all laws and abstaining from the use or possession of alcoholic beverages and illegal drugs.

Sousa admitted to his probation officer that he had used alcohol on or about May 10, 2011. Sousa was ticketed for failure to wear a safety belt on May 12, 2011. On August 10, 2011, Sousa admitted to his probation officer that he had used marijuana on July 26, 2011, and that he had attempted to circumvent testing procedures by cleaning his system with a substance he purchased. On August 7, 2011, Sousa was charged with operating while intoxicated (OWI, drug related, first offense).

At a December 12, 2011 probation violation hearing, Sousa stipulated that he had been convicted of OWI, he had used marijuana, and he had used alcohol, all while he was on probation. The district court revoked Sousa's deferred judgment and imposed a jail sentence in light of several violations of the terms of his probation and a new criminal charge within months of his plea of guilty and sentencing. Sousa appeals, contending the district court abused its discretion in revoking his deferred judgment.

The sentencing court's decision was not exercised on untenable grounds or for reasons that were clearly unreasonable; we therefore affirm. See *State v.*

Formaro, 638 N.W.2d 720, 724-25 (Iowa 2002) (reviewing sentencing decisions for an abuse of discretion).¹

AFFIRMED.

¹ Sousa's appeal rests upon the claim that without the OWI charge, which he appealed on grounds the court erred in denying his motion to suppress, the court likely would not have revoked his deferred judgment. He contends: "If the OWI conviction is reversed . . . then the trial court's decision to revoke the Defendant's deferred judgment is based on untenable grounds and should not stand." We are not at all convinced that such a claim is properly before us. In any event, this court has affirmed the denial of his motion to suppress. See *State v. Sousa*, No. 11-2055, 2012 WL 3590278 (Iowa Ct. App. Aug. 22, 2012). Because his complaint here is necessarily based upon our reaching a contrary decision in his appeal of the suppression issue, his argument falls apart.

Sousa also contends he presented evidence of mitigating factors: he denied that he had been operating while intoxicated on August 7, 2011; he presented evidence that he was employed full time, and that he had demonstrated clean urinalysis (UA) test results since his arrest on the OWI charge; and he provided a clean UA on the date of the probation violation hearing. These arguments were, in fact, made at the sentencing hearing on the OWI charge, which was not heard until after the court revoked his deferred judgment.