

**IN THE COURT OF APPEALS OF IOWA**

No. 3-073 / 12-1273  
Filed April 10, 2013

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

**vs.**

**STEVEN A. STURGES,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Cerro Gordo County, Gerald W. Magee, Judge.

Steven Sturges appeals from the sentence imposed following his conviction for simple misdemeanor assault. **SENTENCE VACATED; REMANDED FOR RESENTENCING.**

David C. Laudner of Heiny, McManigal, Duffy, Stambaugh & Anderson, P.L.C., Mason City, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, Carlyle D. Dalen, County Attorney, and William Hoekstra, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

**VAITHESWARAN, P.J.**

A defendant contends the district court (1) was not statutorily authorized to admit victim impact statements at his sentencing hearing and (2) abused its discretion in imposing sentence.

***I. Background Facts and Proceedings***

A jury found Steven Sturges guilty of simple misdemeanor assault and the matter was scheduled for sentencing. At the sentencing hearing, the prosecutor informed the court that the victim and her son and daughter wished to present victim impact statements. Sturges's attorney objected as follows:

Your Honor, I have no objection to the victim in this matter testifying. I think she's entitled to that. Nor do I have an objection to the statement that she prepared. My objection is primarily with the daughter, the reading of her statement; she's not here. We don't have any idea what color what flavor there might be for that statement or for her opinion, nor was she at all a party or a victim in any way connected with this case.

And her—the victim's son in this matter was a witness for the State, he was not a victim here; there's not allegation that he was in any way injured or harmed, any physical action in this matter. So I certainly have no problem with the victim being allowed to speak and address the Court; but as far as the other two individuals, they're not physical victims of this assault nor are they parties to this matter.

The court admitted the statements over his objection. The court sentenced Sturges to twenty-one days in jail with credit for time served.

Sturges sought discretionary review, which the supreme court granted.

***II. Victim Impact Statements***

Sturges contends Iowa Code section 915.10 (2011)<sup>1</sup> and, specifically, its exemption for simple misdemeanors, "prohibited the admission and consideration

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<sup>1</sup> This provision states in relevant part:

of the” victim impact statements. Sturges did not preserve error on this issue. *State v. Hernandez-Lopez*, 639 N.W.2d 226, 233 (Iowa 2002) (“If a party fails to timely apprise the district court of an issue, the matter is deemed unpreserved.”). While he lodged an objection, the objection made no mention of section 915.10 or of the absence of statutory authority to admit the statements. Nor can the argument be gleaned from context. *State v. Williams*, 695 N.W.2d 23, 27 (Iowa 2005) ( holding appellate review is warranted “when the record indicates that the grounds for a motion were obvious and understood by the trial court and counsel”). Counsel’s objection only addressed the children’s statements and focused on whether the children were victims.<sup>2</sup> F.N.’s counsel did not object to the statement proffered by Sturges’s wife. Had he raised the issue he presently asserts, the objection necessarily would have applied to all the victim statements. Because the issue was not raised, we decline to consider it.<sup>3</sup>

### **III. Statement of Reasons**

Sturges contends the district court failed to consider relevant factors in imposing sentence and failed to state adequate reasons for the sentence. See *State v. Knight*, 701 N.W.2d 83, 86 (Iowa 2005) (recognizing that in determining

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3. “Victim” means a person who has suffered physical, emotional, or financial harm as the result of a public offense or a delinquent act, *other than a simple misdemeanor*, committed in this state. . . .

4. “Victim impact statement” means a written or oral presentation to the court by the victim or the victim’s representative that indicates the physical, emotional, financial, or other effects of the offense upon the victim.

(Emphasis added.)

<sup>2</sup> See *State v. Tesch*, 704 N.W.2d 440, 452-53 (Iowa 2005) (holding wife of person injured as a result of acts of defendant was not a victim as defined in chapter 915).

<sup>3</sup> Sturges concedes he was obligated preserve error on this matter. He argues he did so.

the proper sentence, a court “must consider which sentence or combination of sentences ‘will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others’” (quoting Iowa Code § 901.5)).

In sentencing Sturges, the district court stated:

I’ve heard the statement from Mr. Sturges’s daughter, I’m not taking most of that into consideration; the only thing that I think is relevant and pertinent would be her statements regarding procedures or assistance they gave him when he had an incident at the time of this incident, a medical incident. As she put it, they helped to save his life, it may or may not be; but the Court remembers that from the trial. And notes that. The rest of it, the Court’s not going to consider it as far as sentencing.

However, I think it was valuable and hopefully valuable for Mr. Sturges to hear that from one of his children. Certainly a sad case and sad history for a child to have and have to say to a parent.

Likewise, the statement from the victim in this case, Sheree, ex-spouse or soon to be ex-spouse, after thirty-two years of marriage, living as she said with paranoia, jealousy and alcoholism. Certainly is clear to the Court, Mr. Sturges that you have a problem with alcohol. I don’t believe that a twelve week course or twelve weeks at Prairie Ridge cures that problem. It may have given you some insight, it may have given you some education, maybe helped you, hopefully helped you a great deal; but I certainly don’t think it’s a cure.

I’m going to adopt the State’s recommendations in full. Twenty-one days in jail, less any time—credit for time served, no contact order will continue. And the request that he not possess firearms is a part of that No Contact Order for the period of that No Contact Order.

And the only other thing that the Court would say at this sentencing regarding the sentencing, is that the jury rendered a verdict of guilty for simple Assault, the assault is clear was on a spouse, the jury did not find domestic assault. Certainly, I believe Mr. Sturges has received a benefit of whatever leniency or consideration that the jury wanted to offer at that time.

The district court provided a detailed statement of reasons that included pertinent factors. We discern no abuse of discretion.

**SENTENCE VACATED; REMANDED FOR RESENTENCING.**