IN THE COURT OF APPEALS OF IOWA

No. 3-229 / 12-1444
Filed April 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MYRANDA MARIE NIEMAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke (guilty plea) and Andrea J. Dryer (sentencing), Judges.

Myranda Nieman appeals from judgment entered upon her guilty pleas. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Rachel C. Regenold, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Joel Dalrymple and Linda Fangman, Assistant County Attorneys, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

Myranda Nieman appeals, contending the district court abused its discretion in denying her request to defer judgment entry.

Nieman worked as a home health aide, providing care for a disabled woman and her elderly mother who was in ill health. While working in that capacity, Nieman stole jewelry and weapons from the home over an extended period of time.

Nieman pleaded guilty to first-degree theft and trafficking in stolen weapons pursuant to a plea agreement in which the State agreed to drop two other counts and a charge in another case, and further agreed not to request any sentence worse than a suspended sentence. The presentence investigation (PSI) report recommended a deferred judgment, noting no victim impact statement had yet been received.

At sentencing, Nieman requested a deferred judgment; the State requested suspended sentences. The State read the victim impact statement that had by then been provided by one of the women from whom Nieman had stolen. In that statement, the victim asked that the court keep Nieman from being placed in a similar position of trust that had allowed Nieman access to the family's possessions.

The district court denied the requested deferred judgments, imposed judgments, suspended concurrent sentences, and placed Nieman on probation for two to five years. Nieman appeals.

A sentence imposed by the district court is reviewed for errors at law. Iowa R. App. P. 6.907; *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000).

A sentence will not be upset on appeal unless the defendant demonstrates an abuse of trial court discretion or a defect in the sentencing procedure. *Grandberry*, 619 N.W.2d at 401.

> Sentencing decisions of the district court are cloaked with a strong presumption in their favor. Where, as here, a defendant does not assert that the imposed sentence is outside the statutory limits, the sentence will be set aside only for an abuse of discretion. 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.

State v. *Thomas*, 547 N.W.2d 223, 225 (Iowa 1996) (citations omitted).

Pursuant to Iowa Code section 901.5 (2011), a deferred judgment was a sentencing option which could be exercised "in the discretion of the court" in this case. *See* Iowa Code § 907.3. "When a sentence is not mandatory, the district court must exercise its discretion in determining what sentence to impose." *Thomas*, 547 N.W.2d at 225. In considering sentencing options the court is to determine, in its discretion, which of the authorized sentences will provide both the maximum opportunity for the rehabilitation of the defendant and for the protection of the community from further offenses by the defendant and others. Iowa Code § 901.5; *State v*. *Hildebrand*, 280 N.W.2d 393, 395 (Iowa 1979). The courts owe a duty to the public as much as to the defendant in determining a proper sentence. *State v*. *August*, 589 N.W.2d 740, 744 (Iowa 1999). The punishment should fit both the crime and the individual. *Id.*

The district court considered the defendant's age (twenty), the fact that she was expecting her third child, the PSI recommendation, her juvenile assault charge, and lack of adult criminal record. The court stated its reasons for imposing judgment on the record:

> In this case I think that my prime consideration should be protection of the community from further offenses of this type. . . .
>
> You have training as a certified nurse's assistant; and I think for the protection of the community, knowing that you have that training, that if you're in the position to be hired for similar work in the future, that the people who are hiring you and possibly putting you in this position should know that you have a record for doing this type of conduct.
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> These were continuing offenses. You stole from people who invited you into their home to care for them. And I wouldn't classify them as helpless, but I would say that they were dependent on you for care. They entrusted you to be in their home to provide them with that care. And the community needs to know that if you are in the position where you could perform that type of work again, that you have a history of stealing from people who entrust you to do that. I think it is important for this charge to be on your record exactly for that reason, and that is the reason why I have selected this particular sentence, despite the recommendation of the presentence investigation.

We find no abuse of discretion and therefore affirm.

AFFIRMED.