

IN THE COURT OF APPEALS OF IOWA

No. 7-286 / 06-1441
Filed May 23, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TIMOTHY DANIEL DUGAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,
Judge.

Timothy Dugan appeals from the sentence entered upon his convictions
for a drug stamp violation and assault causing injury. **AFFIRMED.**

Timothy McCarthy of McCarthy & Hamrock, P.C., West Des Moines, for
appellant.

Thomas J. Miller, Attorney General, Thomas Tauber, Assistant Attorney
General, William E. Davis, County Attorney, and Kelly Cunningham, Amy Devine,
and Rob Cusack, Assistant County Attorneys, for appellee.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

VOGEL, J.

On July 21, 2006, Timothy Dugan pled guilty to a drug tax stamp violation, in violation of Iowa Code section 453B.3 (2005), and assault causing bodily injury, in violation of section 708.2(2). Following that plea, the Iowa Department of Correctional Services compiled a presentence investigation report in which it recommended probation. At the subsequent sentencing hearing, Dugan requested probation, while the State declined to give any recommendation. The court sentenced him to a term of imprisonment not to exceed five years on the tax stamp conviction and a concurrent term of 120 days on the assault conviction. Dugan appeals, claiming “the district court’s decision to sentence [him] to prison was unreasonable.”

Our review of a sentence imposed in a criminal case is for correction of errors at law. Iowa R. App. P. 6.4; *State v. Witham*, 583 N.W.2d 677, 678 (Iowa 1998). The decision of the district court to impose a particular sentence within the statutory limits is cloaked with a strong presumption in its favor, and will only be overturned for an abuse of discretion or the consideration of inappropriate matters. *State v. Pappas*, 337 N.W.2d 490, 494 (Iowa 1983). An abuse of discretion will not be found unless we are able to discern that the decision was exercised on grounds or for reasons that were clearly untenable or unreasonable. *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995).

We conclude the district court did not abuse its discretion in sentencing Dugan to a term of imprisonment. First, the sentence imposed was within the statutory limits. See *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996); see also Iowa Code §§ 902.9(5) (class “D” felony), 903.1(1)(b) (serious

misdemeanor). Second, prior to the current convictions, Dugan had been convicted of aggravated battery in Illinois, placed on and successfully completed thirty months of probation. After reviewing the presentence investigation report, the court stated on the record, “[t]he greatest concern to the Court is the Defendant’s previous conviction for aggravated battery . . . It doesn’t appear . . . that further probation would be an effective deterrent to further criminal activity by the Defendant.” The court then concluded that the “sentence also would provide the greatest security to the community from further criminal activity by the Defendant” and sentenced Dugan accordingly. Neither this reasoning nor the resulting sentence demonstrates an abuse of discretion by the district court. We therefore affirm the sentence imposed.

AFFIRMED.