IN THE COURT OF APPEALS OF IOWA

No. 8-996 / 08-1026
Filed January 22, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DANIEL PATRICK MCGILL,
Defendant-Appellant.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott, District Associate Judge.

Daniel Patrick McGill appeals the sentence imposed following his plea of guilty to first offense operating while intoxicated. **AFFIRMED.**

Gerald Feuerhelm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Christen Douglass, Assistant Attorney General, Steve Johnson, County Attorney, and Susan Wendell, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

MILLER, J.

Daniel Patrick McGill was driving an automobile alone when in April 2007 he was involved in a single-vehicle accident in which he was seriously injured. Testing revealed an alcohol concentration of 0.131. McGill was charged with operating while intoxicated, first offense, in violation of Iowa Code section 321J.2(2)(a) (2007). After a period of recuperation from his injuries and physical therapy McGill pled guilty in April 2008.

The district court sentenced McGill to serve one year in jail, with all but 120 days suspended and the 120 days to be served in staggered thirty-day increments. It provided that McGill could avoid serving all but the initial thirty days if he complied with certain terms and conditions of probation. The court also sentenced McGill to pay a fine of $625, waiving the remaining one-half of the otherwise required fine of $1250 because McGill apparently had met the statutory conditions for such a waiver.

McGill appeals. He claims:

> THE TRIAL COURT'S SENTENCE WAS EXCESSIVE AND ARBITRARY.

McGill relies on the federal constitutional prohibition against cruel and unusual punishment. *See* U.S. Const. amend. 8 ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."). He cites *State v. Lara*, 580 N.W.2d 783, 784 (Iowa 1998), for the proposition that "[t]he prohibition against cruel and unusual punishments prohibits sentences that are not proportionate to the crime committed." McGill "submits that the court's

sentence is grossly disproportionate to the crime committed and that [it] should be set aside and the case remanded for re-sentencing."

The Supreme Court has "set forth a three-prong test for analyzing whether a punishment is disproportionate to the offense charged." *Id*. at 785. The test requires examination of

> (1) The gravity of the offense and the harshness of the penalty; (2) a comparison of the sentence imposed with those for other crimes in the same jurisdiction; and (3) comparison with the sentence imposed for commission of the same crime in other jurisdictions.

Id. McGill merely asserts that his sentence is grossly disproportionate to his crime. He has provided no examination, analysis, or reasoned argument as to how these three factors apply to the facts of this case. We deem the stated issue waived. *See* Iowa R. App. P. 6.14(1)(*c*)*; Hollingsworth v. Schminkey*, 553 N.W.2d 591, 596 (Iowa 1996) ("When a party, in an appellate brief, fails to . . . argue . . . in support of an issue, the issue may be deemed waived."); *see also State v. Stoen*, 596 N.W.2d 504, 507 (Iowa 1999) ("[w]here a party's failure to comply with the appellate rules requires the court to assume a partisan role and undertake the [party's] research and advocacy, we will dismiss the appeal.") (quotation and citation omitted).

McGill asserts in his brief that our standard of review on the sentencing issue is for an abuse of discretion. We agree with the State that McGill's brief may thus arguably be seen as raising a claim that the sentence imposed by the district court constitutes an abuse of its sentencing discretion. We thus briefly address that question.

Our scope of review is for correction of errors of law. Iowa R. App. P. 6.4. Our standard of review is for abuse of discretion.

> 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) (citation omitted).

As noted in the sentencing transcript, McGill was fifty-five years of age at the time of the crime involved in this case, and had previously been convicted of operating while intoxicated on three occasions, the most recent conviction being a felony conviction for third offense operating while intoxicated in 1994. McGill had an alcohol concentration of more than one and one-half times the legal limit. We find no abuse of sentencing discretion, and affirm the sentence imposed by the district court.

AFFIRMED.