IN THE COURT OF APPEALS OF IOWA

No. 9-919 / 09-0296
Filed December 17, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL SHAWN HASSTEDT,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, George Stigler, Judge.

Defendant appeals contending insufficient evidence supports his criminal convictions and the court abused its discretion in sentencing him to prison. **AFFIRMED.**

Caitlin L. Slessor of Nazette, Marner, Nathanson, & Shea, L.L.P., Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney General, Scott Wadding, Legal Intern, Thomas J. Ferguson, County Attorney, and Charity Sullivan, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

EISENHAUER, P.J.

Michael Hasstedt appeals arguing there is insufficient evidence to support his convictions for criminal mischief and theft. Hasstedt also claims the court abused its discretion in sentencing him to the maximum five-year term for criminal mischief. We affirm.

I. Substantial Evidence.

We review Hasstedt's insufficient evidence claims for errors at law. *State v. Rohm,* 609 N.W.2d 504, 509 (Iowa 2000). We will "uphold a finding of guilt if 'substantial evidence' supports the verdict." *Id.* "'Substantial evidence' is evidence upon which a rational finder of fact could find a defendant guilty beyond a reasonable doubt." *Id.* "We review the facts in the light most favorable to the State." *Id*.

Hasstedt contends the evidence was insufficient to prove "he had no right to act as he did when he cleared the debris [from John Holz's property] and sold the scrap metal and wire." The State concedes error was preserved on the theft conviction for this issue, but argues Hasstedt did not preserve error on the criminal mischief conviction. Under these circumstances we assume Hasstedt preserved error on the criminal mischief conviction on this issue.[1]

In order to be convicted of criminal mischief, the State was required to prove beyond a reasonable doubt Hasstedt acted with the specific intent to damage the property of John Holtz and when he damaged the property he had

[1] Hasstedt did not preserve error on his claim insufficient evidence supported the finding he caused $1000-$10,000 of damage to Holtz's property. This specific ground for insufficiency of the evidence was not raised in Hasstedt's motion for acquittal. Thus, error is not preserved. *See State v. Truesdell*, 679 N.W.2d 611, 615 (Iowa 2004).

no right to do so. For a theft conviction, the State was required to prove Hasstedt took possession or control of the property of John Holtz with the intent to permanently deprive Holtz of his property. Hasstedt contends he lacked the intent necessary for conviction of either crime because he had permission from Holtz to clear out scrap and debris in order to help Holtz develop the property.

Holtz, a nonresident, was trying to sell Iowa property containing a large, concrete factory building, a Quonset hut, and a steel building. Holtz testified he agreed to let Hasstedt use the Quonset hut for storage in return for Hasstedt "keeping an eye on the property, showing a presence, so vandals or anyone else would stay away." Holtz further stated:

> Specifically they were allowed to be in the Quonset hut. I had the property for sale. The main asset of the property was the concrete building and . . . the Quonset hut and the small steel building were just marginal condition. Any buyer would have been interested specifically in the concrete building and they were not to go into that concrete building.

Holtz explained he never gave permission for Hasstedt to gut and strip the interior of the concrete building: "It makes absolutely no sense that I would tell someone to destroy a building that I was attempting to sell." Holtz's testimony was supported by the testimony of Melvin Schwartz, Alan Brase, and Betty Fuller. Holtz's letter "revoking all permission to be on the property" stated:

> This is to notify you that because you have failed to honor your commitment to mow the grass and to stay out of the large factory building, you are no longer permitted to store your construction material. . . . You also have stored household items in the large factory which I told you from day 1 [was] to never be used or entered. . . . You will no longer have permission to enter the property after Sept. 1, 2006, so please remove everything that belongs to you before that date.

The credibility of witnesses is for the factfinder to decide except for those rare circumstances where the testimony is absurd, impossible, or self-contradictory. *State v. Kostman,* 585 N.W.2d 209, 211 (Iowa 1998). A reasonable juror could conclude Holtz did not permit Hasstedt to enter the concrete building to gut, strip, and sell its contents for scrap. Therefore, substantial evidence supports the criminal mischief and theft convictions.

II. Sentence.

The State, agreeing with the presentence investigation report, recommended a prison term and noted Hasstedt had four prior convictions for criminal mischief. The State contended prison was also supported by Hasstedt's three prior convictions for theft or theft-related incidents, one occurring while Hasstedt was on parole. Further, Hasstedt was on parole for a felony offense when the current criminal conduct occurred in early 2007.

Hasstedt's request for a suspended sentence was not granted. The court sentenced Hasstedt to a five-year indeterminate term for criminal mischief, a one-year term for theft, and three two-year terms for three separate counts of driving while barred. Despite the State's urging the court to run the two-year terms concurrently with each other but consecutively to the five-year term, the court ordered all sentences to run concurrently.

On appeal Hasstedt argues the court abused its discretion in sentencing him to the maximum five-year term for criminal mischief. Hasstedt claims the underlying dispute was a contract dispute "more civil in nature," the court did not

fully consider his chances for reform, and probation should have been ordered so he could continue to work and rehabilitate himself.

Our review is for correction of errors at law. Iowa R. App. P. 6.907 (2009). "Sentencing decisions of the district court are cloaked with a strong presumption in their favor." *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). A sentence will not be upset on appellate review unless the defendant demonstrates an abuse of district court discretion or a defect in the sentencing procedure. *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000). 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." *Thomas*, 547 N.W.2d at 225. Additionally, "a sentencing court need only explain its reasons for selecting the sentence imposed and need not explain its reasons for rejecting a particular sentencing option." *State v. Ayers*, 590 N.W.2d 25, 28 (Iowa 1999).

Our review of the record reveals the sentencing court considered and weighed Hasstedt's extensive criminal history and propensity to commit crimes in declining to award a suspended sentence. The court credited Hasstedt's military record in considering his character and actions. After Hasstedt spoke about his recent employment and attempts at rehabilitation, the court decided to reject the State's consecutive sentence recommendation and run all sentences concurrently. We conclude the district court did not exercise its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable in sentencing Hasstedt.

AFFIRMED.