

IN THE COURT OF APPEALS OF IOWA

No. 0-088 / 09-0760
Filed February 24, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SHELLY LYNN MARQUETTE,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Fae Hoover-Grinde,
Judge.

A defendant appeals from the judgment and sentence entered following
her guilty plea to three charges of assault. **CONVICTIONS AFFIRMED,
SENTENCE VACATED, AND REMANDED FOR RESENTENCING.**

Mark C. Smith, State Appellate Defender, and Martha Lucey, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney
General, Harold Denton, County Attorney, and Jerry Vander Sanden and
Nicholas Maybanks, Assistant County Attorneys, for appellee.

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

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

EISENHAUER, J.

Shelly Lynn Marquette appeals from the judgment and sentence entered following her *Alford* plea to assault with the intent to commit serious injury, assault by use or display of a dangerous weapon, and assault causing bodily injury. She contends trial counsel was ineffective in failing to object to multiple punishments for the same incident in violation of the Double Jeopardy Clause. She also contends the district court abused its discretion in sentencing her.

On May 6, 2008, Marquette was involved in an altercation with her boyfriend wherein she threatened him with a chef's knife, sliced his left arm, and stabbed him. She now claims the wounds were caused by a single swipe with the knife. The minutes of testimony attached to the trial information indicate the police officers who responded to the incident would testify to several stab wounds to the body. The emergency room doctor indicated he would testify to lacerations and stab wounds to the body. The injuries resulted in "massive blood loss."

Marquette was charged with willful injury causing serious injury, a class C forcible felony, and assault by use or display of a dangerous weapon, an aggravated misdemeanor. An amended trial information charged Marquette with assault with intent to cause serious injury, an aggravated misdemeanor, assault with using or displaying a dangerous weapon, and assault causing bodily injury, a serious misdemeanor. Marquette struck a deal with the State to enter an *Alford* plea, see *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L.Ed.2d 162 (1970), to these charges and seek deferred judgment and sentence with the

State not making a sentencing recommendation. Her written waiver of rights and plea of guilty acknowledged she would likely be convicted of assault causing serious injury, a class D felony if she went to trial. The plea allowed her to avoid the possibility of any felony conviction.

The district court accepted Marquette's guilty pleas. She did not file a motion in arrest of judgment and was sentenced to two years imprisonment on the first two counts and one year imprisonment on the third count. The court ordered the sentenced to be served consecutively.

Marquette first contends her trial counsel was ineffective in failing to object to sentencing on all three counts of assault as they arose out of a single act and, therefore, the sentences violated the Double Jeopardy Clause. We review this claim de novo. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). To establish her claim of ineffective assistance of counsel, Marquette must demonstrate by a preponderance of the evidence (1) her trial counsel failed to perform an essential duty, and (2) this failure resulted in prejudice. *Id.* If an ineffective-assistance-of-counsel claim is raised on direct appeal from the criminal proceedings, we may decide the record is adequate to decide the claim or may choose to preserve the claim for postconviction proceedings. *Id.* This record is sufficient to decide the issue on direct appeal.

The Double Jeopardy Clause of the Fifth Amendment of the United States Constitution protects a defendant from multiple punishments for the same offense. *State v. Butler*, 505 N.W.2d 806, 807 (Iowa 1993). To determine whether two or more charges comprise the same offense, we must consider

“whether each [charge] requires proof of a fact which the other does not.” *Id.* Additionally, we look to see whether it is possible to commit the greater offense without also committing the lesser. *State v. Lambert*, 612 N.W.2d 810, 815 (Iowa 2000).

We conclude counsel did not breach an essential duty. Even assuming all three counts arise from one act of lunging at her boyfriend with a knife, three separate assaults took place: (1) Marquette threatened her boyfriend with the knife (assault by use or display of a dangerous weapon); (2) she sliced his arm with the knife, causing a laceration (assault causing bodily injury); and (3) she stabbed him under the arm (assault with intent to inflict serious injury). As Marquette admits, none of the charges she pled guilty to are lesser included offenses of any of the other charges.

Marquette argues the court improperly considered her history as a victim of domestic assault when imposing her sentence. She also contends the district court erred in sentencing her to consecutive sentences because it failed to state its reasons for so doing. The State concedes the matter should be remanded for sentencing as the court gave no reason for consecutive sentences

The court is required to state its reasons for imposition of consecutive sentences. Iowa R. Crim. P. 2.23(3)(d); *State v. Keopasa euth*, 645 N.W.2d 637, 641 (Iowa 2002). Although the stated reasons do not need to be detailed, they must be sufficient to allow appellate review of the discretionary action. *State v. Evans*, 671 N.W.2d 720, 727 (Iowa 2003). Here, the district court failed to state any reasons for imposing consecutive sentences. Accordingly, we vacate the

sentence and remand to the district court for resentencing. Because we are vacating the sentence we do not address the issue of consideration of improper reasons in imposing the sentence.

**CONVICTIONS AFFIRMED, SENTENCE VACATED, AND REMANDED
FOR RESENTENCING.**