

IN THE COURT OF APPEALS OF IOWA

No. 0-128 / 09-1124
Filed March 24, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

NICK LEE PIERCE,
Defendant-Appellant.

Appeal from the Iowa District Court for Sac County, Gary L. McMinimee (trial) and Joel E. Swanson (sentencing), Judges.

Defendant ordered to serve consecutive sentences seeks remand for resentencing. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, David A. Adams, Assistant State Appellate Defender, and Tyler L. Eason, Legal Intern, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney General, Earl Hardisty, County Attorney, Charles N. Thoman, Assistant County Attorney, and Karla Baumler, Legal Intern, for appellee.

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

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

EISENHAUER, J.

After a bench trial, Nick Lee Pierce was convicted of lascivious acts with a child and sex abuse in the third degree. Pierce was sentenced to terms not to exceed ten years on each count to be served consecutively. On appeal, Pierce argues the court failed to provide adequate reasons for consecutive sentences. We affirm.

We review the trial court's discretionary action in sentencing for an abuse of discretion. *State v. Delaney*, 526 N.W.2d 170, 178 (Iowa Ct. App. 1994). Iowa Rule of Criminal Procedure 2.23(3)(d) requires a trial court to state on the record its reasons for selecting a particular sentence. “[T]he duty of [providing] an explanation for a sentence includes the reasons for imposing consecutive sentences.” *Delaney*, 526 N.W.2d at 178. This explanation must provide enough detail to permit review of the court's discretionary action. *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989). Importantly, however, the reasons need not be specifically tied to the imposition of consecutive sentences, but may be found from the reasons expressed for the overall sentencing plan. *Id.*

We conclude the numerous reasons expressed in the overall sentencing plan in conjunction with the court's discussion of consecutive sentencing provide sufficient detail for our review. First, the court made clear at the hearing it was sentencing Pierce in two separate cases involving two different juvenile victims. Accordingly, the court entered two separate and distinct sentencing orders.

Second, the court indicated it had reviewed the presentence investigation report “very carefully” including the recommendation by the presentence

investigator (incarceration) and the recommendations in the psychosexual assessment report. The assessment report recognized Pierce's intellectual disability, but concluded he "does not test in the Mentally Retarded Range." The assessment report also stated Pierce needs twenty-four hour supervision, "meaning he is not alone, knowing where he is going etc. is not sufficient." Further, Nick described liking to "just drive around," which "is not an appropriate activity" and "suggests he is not supervised and is looking for children and opportunities for offending."

The court stated:

The Psychosexual Assessment . . . really sets forth the idea that you are somewhat unaware of what you have done as to the effect, and of course, the legality of it all

The Impressions that are put into the Psychosexual Assessment are of great . . . importance to me and . . . it has been determined that you have a high possibility of re-offending. [A]s indicated by [the prosecutor in urging consecutive sentences], while one charge [was] pending, you did it again, that would result in the second charge, so there is a great deal of education that needs to be given to you [T]he primary purpose of sentencing . . . is to protect society from people who violate the law and in this particular case and the type of crime . . . [it] is very, very important to me . . . to protect society from people such as yourself who violate the law and continue to do it, but really most importantly do it with small children who perhaps don't have the ability, the understanding, and are able to defend themselves, so . . . the rehabilitation part of this is very, very important also . . . changing your behavior . . . would protect society, which in this particular case means small children.

The court also recognized Pierce's substance abuse history "and you appear to have habits that are poor with skills that are very, very low which leads [the evaluator] to believe that your social skills just simply collapse"

Additionally, the court stated the presentence investigation was accurate, contained appropriate recommendations, and concluded:

I've thought about the concurrent-consecutive sentences. My job I guess in one sense is not to consider and to concern myself with what the corrections people are going to be doing on a parole, so the Lascivious Acts charge and the Sexual Abuse charge will run consecutively . . . you complete one and then you start on the second one. . . .

We conclude the district court provided sufficient reasoning to enable judicial review of its sentencing decision and find no abuse of discretion. See *State v. Leckington*, 713 N.W.2d 208, 216-17 (Iowa 2006) (upholding sentencing where consecutive periods needed to make sure other young people remained safe); *Johnson*, 445 N.W.2d at 343 (upholding consecutive sentencing where court noted separate victims were affected by defendant's separate crimes).

AFFIRMED.