

IN THE COURT OF APPEALS OF IOWA

No. 0-848 / 10-0550
Filed December 8, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

STEPHEN ANDREW WEBER,
Defendant-Appellant.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker,
Judge.

A defendant appeals his sentences imposed on drug-related charges,
contending that the district court did not properly articulate its reasons for
imposing consecutive as opposed to concurrent sentences. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney
General, Jennifer Miller, County Attorney, and James S. Scheetz, Assistant
County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ. Tabor, J.,
takes no part.

VAITHESWARAN, J.

Stephen Andrew Weber was on probation for two drug-related offenses when the State charged him with several additional drug-related offenses. The State also applied to have Weber's probation revoked in the two earlier cases.

Weber pleaded guilty to possession of marijuana (third offense), and two counts of possession of methamphetamine (third offense). At the same time, Weber stipulated that these guilty pleas provided the factual basis for a finding that he violated the conditions of probation in the two earlier cases. The court scheduled a combined sentencing hearing (on the guilty pleas) and disposition hearing (on the probation revocation application).

At the combined hearing, the court sentenced Weber to three prison terms not exceeding five years, to be served concurrently. With respect to the two earlier offenses, the court revoked probation, ordered those prison sentences of not more than five years to be served concurrently with each other, and ordered the three new prison sentences to run consecutively to the sentences in the two earlier cases.

On appeal, Weber contends the district court did not articulate reasons for imposing consecutive sentences. See *State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000); *State v. Uthe*, 542 N.W.2d 810, 816 (Iowa 1996). We disagree. The court set forth a comprehensive statement supporting the sentences and overall disposition.

Initially, the court stated:

In looking at the presentence investigation, Mr. Weber, it's clear that you've had a persistent drug problem that has caused you to be charged with a variety of drug offenses over the last ten

or so years. One of the basic conditions of any probation, as I'm sure you understand, is that you don't violate the law again. You did that in these cases. You were on probation when these offenses were committed, and the continued use of drugs I think indicates that you haven't really applied yourself to your treatment or you haven't, I guess, applied the—the tools that perhaps you were taught during the time you were in treatment to control your use of drugs, and I don't pretend to understand what it would take, Mr. Weber, to get you to cease using drugs. I know it's probably various things for various people, but it hasn't happened with you. Obviously probation has been attempted with you. You have been placed in a residential facility, and yet you find yourself back here facing sentencing on these three new offenses. I'll go ahead and impose the sentence on these three most recent offenses and then address the probation revocations along with the disposition that I've determined is appropriate in these cases.

The court then stated:

And before we move to actual—the actual sentencing, I want to bring in the two revocation cases. In Case Number 64265, you are sentenced for the offense of possession of methamphetamine, third offense. In 66718, you are sentenced for the offense of possession of marijuana, third offense.

. . . .

Those are both Class D felonies, and at the time of sentencing the sentences were suspended and you were placed on probation. I know it's previously been determined that the violations have been established, but clearly the commission of the three additional offenses are violations of the probations imposed in 64625 and 66718, and, of course, they constitute violations of those probations, so the probations granted in 64625 and 66718 are revoked. As I understand it, initially at sentencing those sentences were ordered to run concurrently for a total of not more than five years.

In Case Number 75042, based upon the history in these cases, Mr. Weber, and the fact that these offenses were committed while you were under probation supervision, I don't think further probation is warranted. I think you should be required to serve the sentences I have imposed, each in case 75042, 74617, and 74611. I'm going to order that the sentences imposed in those three cases run concurrently, however, I think they should run consecutive to the sentence imposed—sentences imposed in 64265 and 66718.

The court concluded with:

It is unfortunate, Mr. Weber, that we find ourselves in this position today, and I take no particular joy in imposing prison sentences, but I think the record you've established here—I think that's the appropriate disposition for these cases

It is apparent from this three-part analysis that the court's imposition of consecutive sentences was part of its overall sentencing plan. See *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989). Accordingly, we discern no abuse of discretion. See *id.* at 344; *cf. State v. Delaney*, 526 N.W.2d 170, 178 (Iowa Ct. App. 1994) (“[T]he decision to impose consecutive sentences was detached from the decision to deny probation, and was made without further comment or explanation.”).

AFFIRMED.