

IN THE COURT OF APPEALS OF IOWA

No. 2-1031 / 12-0668
Filed January 9, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MIGUEL ANGEL ARELLANO,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg,
Judge.

Miguel Angel Arellano appeals from his trial on the minutes of testimony,
conviction, and sentencing for burglary in the second degree and kidnapping in
the third degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney
General, John Sarcone, County Attorney, and Mark Sandon, Assistant County
Attorney, for appellee.

Considered by Potterfield, P.J., and Danilson and Tabor, JJ.

POTTERFIELD, P.J.

Miguel Angel Arellano appeals from the trial on the minutes of testimony, conviction, and sentence for burglary in the second degree and kidnapping in the third degree. He contends he was provided ineffective assistance of counsel when his attorney allowed him to plead guilty and failed to file a motion in arrest of judgment, and that the district court erred in failing to give sufficient reasons for imposing a consecutive sentence. We affirm, finding Arellano's counsel was not ineffective and that the court provided sufficient reasons for its decision to impose consecutive sentences.

I. Facts

Arellano broke into the home of his sleeping wife, who had a no-contact order in effect against him. When she refused to reconcile with him, he bound her hands, taped her mouth, and carried her into her basement. There, he hung an electrical extension cord around a wooden beam on the ceiling and positioned a chair beneath it. He then had his wife stand on the chair, and he stood there with her. Arellano fixed the cord into nooses around both their necks. He kicked the chair away.

Arellano's wife was able to get her hands free of her bondage and ultimately remove the noose. Arellano, however, was not able to free himself. As he hung, his wife retrieved a knife from the kitchen and cut him down. She performed CPR on Arellano until he was revived and left the residence, and then she called the police.

Arellano was arrested and charged with burglary in the first degree, kidnapping in the third degree, and domestic abuse assault with intent to inflict

serious injury. He was also charged with misdemeanor domestic abuse and violation of a no-contact order. Arellano was offered a plea agreement in which the State agreed to drop the domestic abuse charges and the violation of a no-contact order charge, and reduce the burglary to second degree. The agreement did not reduce the charge of kidnapping in the third degree. While Arellano initially expressed interest in moving forward with a guilty plea proceeding, he ultimately changed his mind and asked for a trial on the minutes of testimony on the reduced charge of burglary in the second degree and kidnapping in the third degree. The State agreed to proceed to trial on stipulated evidence, maintaining the plea bargain charging concessions—dismissing the domestic abuse assault charges and the violation of a no contact order charge. When determining whether Arellano was intending to plead guilty or stipulate to the minutes of testimony, the court asked:

COURT: Mr. Arellano, the point where we were at where you told me you were not guilty, now I hear that you and your attorney are willing to stipulate, which means you are going to agree, that the Minutes of Testimony are accurate and that you would stipulate that if the witnesses would come in and testify that have been named in the Trial Information and the Minutes of Testimony, you would agree that they would testify as stated in those Minutes of Testimony; is that correct?

ARELLANO: Yes.

After engaging Arellano in a colloquy regarding his waiver of his trial rights and waiver of a jury trial, informing Arellano of the charges against him and the applicable punishments, and reviewing the minutes of testimony, the district court found Arellano guilty of burglary in the second degree and kidnapping in the third degree. The court sentenced Arellano to two terms of imprisonment, each not to

exceed ten years and to be served consecutively. Minimum fines were also imposed and suspended. He appeals from both the conviction and sentence.¹

II. Analysis

Arellano's first point of error is that he received an insufficient guilty plea colloquy, and that counsel was ineffective by allowing him to proceed and by failing to file a motion in arrest of judgment. We note Arellano did not in fact plead guilty to the charges. He agreed to a trial on the minutes of testimony; a fact that is clear from this record. *State v. Sayre*, 566 N.W.2d 193, 196 (Iowa 1997) (“[A]t a minimum, an appellate court must be able to clearly ascertain from the record whether a defendant actually pled guilty or if he merely stipulated to a bench trial on the minutes.”). Therefore, he was not entitled to a guilty plea colloquy. *State v. Liddell*, 672 N.W.2d 805, 813 (Iowa 2003).

If a defendant is in fact stipulating to a bench trial on the minutes, then a trial court must: (1) verify that the defendant has waived his right to a jury trial in accordance with Iowa Rule of Criminal Procedure 16(1); (2) confirm the extent of the factual record to which the parties are stipulating; and (3) “find the facts specially and on the record,” separately state its conclusion of law, and render an appropriate verdict as required by Iowa Rule of Criminal Procedure 16(2).

Sayre, 566 N.W.2d at 196 (Iowa 1997). Under Iowa Rule of Criminal Procedure 2.17(1) (formerly rule 16(1)), the court was required to ensure Arellano's jury trial waiver was made voluntarily and intelligently. This requires the court to “ascertain whether the defendant understands the difference between a jury and non-jury trial, through an in-court colloquy.” *Liddell*, 672 N.W.2d at 813; *see also*

¹ Arellano submitted a pro se supplemental brief on November 21, 2012. His counsel filed his final brief on October 26, 2012. Because his brief is untimely, we will not consider it here. See Iowa R. App. P. 6.901(2)(a) (stating any pro se supplemental brief must be filed within fifteen days after the proof brief filed by defendant's counsel).

State v. Jones, 817 N.W.2d 11, 16 (Iowa 2012). The verdict following a trial on the minutes of testimony must also conform to Iowa Rule of Criminal Procedure 2.17(2) (formerly 16(2)), which requires the court “find the facts specially and on the record, separately stating its conclusions of law and rendering an appropriate verdict.” See also *Jones*, 817 N.W.2d at 16 (finding “on the record” language of Rule 2.17(2) requires a court to reconvene the proceedings and announce its verdict in open court). Arellano points to no error with this aspect of the proceedings. Trial counsel did not allow Arellano to plead guilty and was not ineffective.

Arellano’s second point of error is that the district court did not sufficiently provide reasons for running his sentences consecutively. We review the district court’s sentencing for abuse of discretion. *State v. Lumadue*, 622 N.W.2d 302, 304 (Iowa 2001). The court is required to state on the record its rationale for imposing a particular sentence. *Id.* (quoting Iowa Rule Criminal Procedure 2.23(3)(d)). The court must provide more than vague and generalized rationale or boilerplate. *Id.* at 304–05. A court is required to provide an explanation for the imposition of consecutive sentences. *State v. Delaney*, 526 N.W.2d 170, 178 (Iowa Ct. App. 1994). Such an explanation must be sufficient for our review of the sentence imposed, and we may look to the particular reasons expressed for the overall sentencing plan. *Id.*

Here, the district court first stated it sentenced Arellano “to a period of incarceration not to exceed ten years on Count I and ten years on Count II, ten years on each count to run consecutive as to each other.” The court noted that imposing a less strict sentence would “lessen the seriousness of the offenses

involved, and the Court believes that the public is entitled to maximum protection.” Arellano urges us that because the incident arose out of a domestic abuse assault, the safety of the public at large is not of concern. We disagree, and looking at the entire sentencing plan, find the district court provides us with sufficient explanation for our review of the sentence imposed. *See id.* We therefore find the trial court expressed sufficient reasons for its decision to impose consecutive sentences.

AFFIRMED.