

IN THE COURT OF APPEALS OF IOWA

No. 2-1032 / 12-0670
Filed January 9, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

VICTORIA KAY CONRAD,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Kellyann M. Lekar (plea) and George L. Stigler (sentencing), Judges.

Victoria Conrad appeals from the sentences imposed upon her convictions of two counts of forgery, being a habitual offender, and one count of second-degree theft. **REVERSED AND REMANDED FOR RESENTENCING.**

Mark C. Smith, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellee.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brook Jacobsen, Assistant County Attorney, for appellee.

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

DANILSON, J.

Victoria Conrad appeals from the sentences imposed upon her convictions of two counts of forgery, being a habitual offender, and one count of second-degree theft.¹ The district court sentenced Conrad on the forgery counts to consecutive fifteen-year terms, and on the theft count to a concurrent five-year term. On appeal, Conrad contends the district court abused its discretion in considering an improper factor and did not adequately state its reasons for imposing consecutive sentences. Because we conclude an impermissible factor crept into the sentencing proceedings, we reverse and remand for resentencing.

Iowa Rule of Criminal Procedure 2.23(3)(d) requires a sentencing judge to “state its reason for selecting the particular sentence” on the record, including its reasons for imposing consecutive sentences. *State v. Barnes*, 791 N.W.2d 817, 827 (Iowa 2010). The reasons given must be sufficient to allow appellate review. *State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000). Sentencing decisions “are cloaked with a strong presumption in their favor.” *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995).

“In exercising its discretion, the district court is to weigh all pertinent matters in determining a proper sentence including the nature of the offense, the attending circumstances, the defendant’s age, character, and propensities or chances for reform.” *Id.* (internal quotation marks and citation omitted); see also Iowa Code § 901.3 (2011) (listing presentence investigation factors, which include the defendant’s “characteristics, family and financial circumstances,

¹ At the plea hearing Conrad acknowledged prior forgery convictions in 2003, 2005, and 2007.

needs, and potentialities”; “criminal record and social history”; “circumstances of the offense”; and “[a]ny mitigating circumstances”). A sentence will not be upset unless the defendant demonstrates an abuse of the trial 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 when the court exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable.” *Barnes*, 791 N.W.2d at 827. The consideration by the trial court of impermissible factors constitutes a defect in the sentencing procedure. *State v. Liddell*, 672 N.W.2d 805, 815 (Iowa 2003).

Conrad argues the district court considered an impermissible factor, characterizing the court’s statements as having “equated the potential relationship of Conrad with her youngest child as potentially abusive.” She contends the court’s sentencing decision, including the imposition of consecutive sentences, may well have been ordered to ensure she not be given early parole or release.

Conrad, through counsel, and in her own statement, asked the court to consider concurrent sentences, repeatedly referring to Conrad’s infant child as a reason for the court’s leniency. The district court observed:

I am simply not willing to buy into any of the notions you have expressed to me here today. To be blunt with you, the best thing that you could do for this most recent child is the same thing that you did for the other two children and that’s to get away from her and to stay away from her because all you’re going to do is to wreck her life like you have wrecked your own life. But that’s your business.

In light of the pleas of concessions based upon Conrad's youngest child, and the court's qualification, "but that's your business," we find these comments simply responsive to Conrad's sentencing arguments.

The court noted Conrad's prior convictions and seven previous prison terms, and her re-offending almost immediately upon release from custody, resulting in additional pending convictions. The court then imposed two fifteen-year sentences consecutively for a total of thirty years, with the other sentences to run concurrent. After imposing the sentences the court stated:

This will be your eighth time, and I don't believe that you have got any regard for any child that you have including this youngest child and the best thing for you, and certainly for that child, is to keep you away from that child for as long as possible because all you're going to do is harm her by inflicting more damage of an emotional nature to that child.

Although the district court's initial comments about Conrad's child were qualified by the comment, "but that's your business," the same qualification was not stated by the court in its final comments. We cannot quickly dismiss the express comment that clearly suggests the sentencing scheme imposed was intended, at least in part, to keep Conrad from her child "as long as possible." Because we conclude this improper factor "crept into the proceedings," we reverse and remand for resentencing. See *State v. Thomas*, 520 N.W.2d 311, 313 (Iowa 1994) (stating the "important focus is whether an improper sentencing factor crept into the proceedings; not the result it may have produced or the manner it may have motivated the trial court"; and noting it is "impermissible for a sentencing court to deliberately lengthen a sentence in an effort to interfere with the parole practices"); see also *See State v. Remmers*, 259 N.W.2d 779, 785

(Iowa 1977) (noting it is impermissible to partially base a sentencing decision on a desire to lengthen minimum sentence defendant would serve). We think it is equally impermissible to lengthen a sentence to keep a parent away from their child for the benefit of the child. We acknowledge the district court's remarks may have been intended to simply redirect Conrad to her responsibility as a parent, and "the intensity of the moment may result in comments which greater deliberation would reject." *Thomas*, 520 N.W.2d at 314. However, on this record we cannot dismiss the content of the comments at the time sentencing was imposed.

Conrad also contends the district court did not adequately state its reasons for imposing consecutive sentences. In light of our conclusion that remand and resentencing is necessary, we need not address this claim.

REVERSED AND REMANDED FOR RESENTENCING.