

IN THE COURT OF APPEALS OF IOWA

No. 2-204 / 11-1134
Filed April 11, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

FRANCISCO VILLA,
Defendant-Appellant.

Appeal from the Iowa District Court for Marshall County, Kim M. Riley,
Judge.

Francisco Villa appeals from the sentence imposed following his
convictions for two class “D” felonies and three aggravated misdemeanors.

AFFIRMED.

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

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney
General, Jennifer Miller, County Attorney, and Paul Crawford, Assistant County
Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

TABOR, J.

Francisco Villa, a registered sex offender, challenges the district court's order imposing a total sentence not to exceed fourteen years following his convictions for two class "D" felonies and three aggravated misdemeanors. Because the sentencing record reveals a reasonable overall plan supported by permissible considerations, we affirm.

I. Background facts and prior proceedings

Given his adjudication for second-degree sexual abuse, Villa must register his address with authorities and is not permitted to live within two-thousand feet of a school or child care facility. On April 23, 2010, Villa received a two-year suspended sentence in AGCR73951¹ for failure to register as a sex offender. On April 20, 2011, he admitted violating his probation. At a hearing on July 6, 2011, the court revoked his probation and imposed the indeterminate two-year term.

At that same hearing, the court sentenced Villa for two residency restriction violations. See Iowa Code § 692A (2009). The first (AGCR75618) involved conduct from March 1, 2010 to April 23, 2010. The second offense (AGCR76110), enhanced to a class "D" felony, involved conduct from April 23, 2010, to May 26, 2010. The sentencing court considered those two cases to "essentially be the same continuing offense" and ordered the terms run concurrently.

The court then moved to Villa's fourth pending conviction (AGCR76215), failure to report a change in residency between June 4 and June 14, 2010, which

¹ All numbers refer to Marshall County cases.

was classified as a class “D” felony under Iowa Code chapter 692A. When Villa bonded out of jail on his sex offender residency charge, he reported living at 211 West Church Street, the address of the House of Compassion in Marshalltown. Villa was not residing at the address, nor could he stay there based on residency restrictions for sex offenders. The sentencing court noted that a violation of the address reporting requirements was a “slightly different offense” than the residency restriction violations.

Villa’s fifth pending conviction (AGCR76562) was for prostitution, an aggravated misdemeanor offense in violation of Iowa Code section 725.1. In giving reasons for this sentence, the court emphasized the prostitution charge involved Villa’s sexual conduct with another person, committed on a separate date and while he was on probation. The court ran the five-year term in AGCR76215 and the two-year term in AGCR76562 consecutive to each other, and consecutive to the five-year term for the residency restriction violations. The court ordered all of Villa’s sentences to run consecutive to the two-year sentence on the probation violation—for a total indeterminate term not to exceed fourteen years. Villa now appeals from the sentencing order.

II. Standard of Review

We review sentencing decisions for correction of legal errors. Iowa R. App. P. 6.907; *State v. Hennings*, 791 N.W.2d 828, 833 (Iowa 2010). “We will not reverse the decision of the district court absent an abuse of discretion or some defect in the sentencing procedure.” *Hennings*, 791 N.W.2d at 833.

III. Analysis

Iowa Rule of Criminal Procedure 2.23(3)(d) requires the sentencing court to “state on the record its reason for selecting a particular sentence.” The statement does not have to be long and involved, but should not be so brief that the appellate courts are unable to review the exercise of discretion. *Hennings*, 791 N.W.2d at 838. When the court opts to impose consecutive terms, it must give adequate reasons for doing so. *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989). When it is apparent to a reviewing court that the district court ordered consecutive terms as part of its overall sentencing plan, no cause exists for reversal. *Hennings*, 791 N.W.2d at 839.

Villa first complains the district court did not adequately explain why it was imposing a consecutive sentence for his failure to report a change of address (AGCR76215). He also asserts that the imposition of the consecutive term for the registry offense was “untenable.”

In explaining its overall sentencing plan, the district court distinguished between what it saw as essentially a continuing offense of violating the residency restrictions (meriting concurrent terms) and the distinct conduct of failing to report a change of address to authorities (calling for consecutive terms). The court noted that consecutive terms would serve as a deterrent for Villa and other similarly situated offenders who might not take these kinds of “status offenses” seriously.

We are satisfied from reviewing the entire hearing that the court understood its discretion to impose concurrent sentences, but opted to run the

five-year term for failure to register a change in address consecutive to the other terms as a component of its sentencing determination for the five pending offenses. See *State v. Barnes*, 791 N.W.2d 817, 828 (Iowa 2010) (finding the court's reasons for consecutive sentences to be "clearly expressed in its overall explanation for the sentence it imposed"). We also find no abuse of discretion in ordering the sentence in AGCR76215 to be served consecutively to the other terms. Villa provided authorities the address for a facility where he was not residing and, indeed, where he could not have legally resided. The sentencing court did not act unreasonably in concluding Villa's efforts to purposely thwart authorities' efforts to keep track of sex offenders like him required a more severe consequence to stand as both a general and specific deterrence.

Villa's next objection involves his consecutive sentence for prostitution. He asserts the sentencing court considered an unproven allegation from the original trial information in FECR076562, charging Villa with sexual abuse in the third degree. Villa bases his assertion on the court's statement that the prostitution term would be consecutive because that charge concerned "another person being involved in that type of conduct and the fact that the defendant was on probation and a separate commission date." We do not see anything in the sentencing court's explanation that would signal its reliance on the higher crime originally charged. In pleading guilty to prostitution, Villa admitted offering for sale "his services as a partner in a sex act." Those elements encompass the involvement of another person as mentioned by the sentencing court. The court did not improperly suggest that Villa had benefited from a reduced charge when

imposing the consecutive term for the prostitution conviction. See *State v. Thompson*, 275 N.W.2d 370, 372 (Iowa 1979).

Finally, Villa argues the sentencing court abused its discretion in ordering his two five-year terms (in AGCR76110 and AGCR76215) and his one two-year term (in AGCR76562) to run consecutive to the two-year term imposed for his probation violation. He cites to the following statement by the court: “And with respect to the probation revocation matter, the Court determines that because the defendant was on probation that matter should also run consecutively to all other sentences imposed today.” Villa contends the court was incorrect in generalizing that all of his offenses occurred while he was on probation. Villa committed one of the residency restriction offenses (AGCR75618) before he was placed on probation on April 23, 2010.

The sentencing court was not acting under the misconception that Villa committed all of his offenses while on probation. The court specifically noted in discussing the convictions in AGCR75618 and AGCR76110 that Villa “was on probation at the time of commission of one of these offenses.” Further, the court ordered the sentences for those two offenses to be served concurrently with one another. Accordingly, the offense committed before Villa was placed on probation did not stand as a separate term consecutive to the probation revocation.

Finding no abuse of discretion or defect in the sentencing hearing, we affirm the district court’s overall sentencing plan.

AFFIRMED.