IN THE COURT OF APPEALS OF IOWA

No. 2-330 / 11-0822
Filed July 11, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER RAYMOND LINDELL,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark D. Cleve, Judge.

Defendant appeals the district court's decision finding him guilty of violating a no-contact order, revoking his deferred judgment, and imposing consecutive sentences. **AFFIRMED.**

Kent A. Simmons, Davenport, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, Michael J. Walton, County Attorney, and Jerald Feuerbach, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Tabor and Bower, JJ. Mullins, J., takes no part.

VOGEL, P.J.

After pleading guilty to stalking under Iowa Code section 708.11(3)(b)(1) (2009), and criminal mischief under section 716.6(a), the defendant, Christopher Lindell, was granted a deferred judgment and placed on supervised probation. A no-contact order was also entered, prohibiting Lindell from having any contact with the victim of his crimes. Shortly thereafter, the district court found Lindell violated the no-contact order, and imposed a jail sentence. It also revoked his probation, entered judgment, and imposed consecutive sentences on the stalking and criminal mischief pleas.

On appeal, Lindell asserts the district court erred in finding substantial evidence supported the allegations he violated the no-contact order and violated the terms of his probation. He also claims the district court erred in imposing a jail term for the no-contact order violation, in a contempt proceeding, as well as a prison sentence after revoking his probation. Finally, Lindell asserts the district court abused its discretion in sentencing him based on the consideration of only one factor. For the reasons stated below, we affirm.

I. BACKGROUND AND PROCEEDINGS.

On October 6, 2010, Lindell was charged with two counts of stalking while subject to a no-contact order and one count of criminal mischief in the third degree. Lindell pleaded guilty to one count of stalking and one count of criminal mischief in the fourth degree on December 15, 2010. In exchange for the guilty plea, the State agreed to dismiss one count of stalking and would recommend incarceration at sentencing; Lindell was free to ask for a deferred judgment and probation. On January 20, 2011, the court granted Lindell's request for a

deferred judgment and placed him on supervised probation for two years. The court also entered another no-contact order protecting the victim, A.C., for five years. Lindell was to have no communication with A.C., not be in the immediate vicinity of her residence or place of employment, and not to personally or through a third party threaten, assault, stalk, molest, attack, harass, or otherwise abuse A.C., persons residing with her, or her family.

Five days after Lindell was sentenced, on January 25, 2011, A.C. reported to the police that Lindell drove by her place of employment at a furniture store, stopped his vehicle in front of the large windows, and stared at her. She looked up from her desk as she felt someone was staring at her and reported she made eye contact with Lindell for a period of five to ten seconds. Lindell then drove away. A.C. first called her brother, and then contacted police.

The police interviewed Lindell at his probation officer's office. Lindell denied staring at A.C. and gave several different explanations as to why he might have been in the area including that he was just at a nearby gas station or restaurant, working at a nearby medical supply delivery company, or cutting through the parking lot to avoid the traffic light. Lindell denied knowing A.C. worked at the furniture store, maintaining that he believed she worked at John Deere.

The police filed a complaint of a violation of the no-contact order on February 4, 2011, and Lindell's probation officer, in conjunction with the county attorney, filed an application for the revocation of Lindell's probation the same day. On March 17, a hearing was scheduled on the violation of the no-contact order under chapter 664A.7. Noting that Lindell was "charged with stalking in a

new case file" and on Lindell's motion, the hearing was continued until May 20, 2011. After the hearing, the court found Lindell guilty of violating the no-contact order, concluding the evidence proved beyond a reasonable doubt that Lindell committed an intentional and knowing violation of the order. The court initially imposed a sixty-day sentence, "as a contempt sanction for such violation," but then later on its own motion vacated the sentence as the court recognized that it had not allowed Lindell the right of allocution before he was sentenced. The court then rescheduled the sentencing to occur in conjunction with the probation revocation hearing.

At the probation revocation hearing on May 26, 2011, Lindell stipulated "that he has been found to be in contempt . . . and that that constitutes a violation of the probation." The State sought to revoke the probation and impose consecutive sentences for the original stalking and criminal mischief charges. Lindell sought to have his probation continued. The court agreed with the State, revoked Lindell's probation, and imposed a term of incarceration not to exceed five years on the stalking charge and a term not to exceed one year on the criminal mischief charge; the sentences were ordered to run consecutively. Lindell was also sentenced to sixty days in jail, with credit for time served, for the violation of the no-contact order. From these sentences, Lindell appeals.

II. SCOPE OF REVIEW.

Our review is for correction of errors at law for Lindell's claim that substantial evidence did not support the district court's finding of a violation of the no-contact order and revocation of his probation. Iowa R. App. P. 6.907. In reviewing a contempt finding, we examine the evidence "to ensure that proper

proof—substantial evidence—supports the judgment of contempt." *Ervin v. Iowa Dist. Ct.*, 495 N.W.2d 742, 744 (Iowa 1993). Substantial evidence is evidence that would convince a rational trier of fact that the defendant is guilty of contempt beyond a reasonable doubt. *Id*. at 744–45. Likewise, "[g]rounds for probation revocation must be proved by a preponderance of the evidence; thus, on review there must be sufficient evidence to support the district court's revocation of probation." *State v. Allen*, 402 N.W.2d 438, 443 (Iowa 1987).

Lindell's claim that the district court exceeded its authority in imposing a sentence for contempt and also revoking his probation and imposing a sentence of incarceration is reviewed for correction of errors at law. *State v. Keutla*, 798 N.W.2d 731, 732 (Iowa 2011). We review Lindell's claim regarding the court's sentencing decision for abuse of discretion. *State v. Kirby*, 622 N.W.2d 506, 511 (Iowa 2001).

III. ERROR PRESERVATION.

As an initial matter, the State asserts Lindell has not preserved his ability to appeal the district court's contempt finding as such a challenge would require a separate appeal either through a writ of certiorari or an application for

discretionary review.[1] The State asserts Iowa Rule of Appellate Procedure 6.108 is not applicable in this case to save Lindell's appeal of the contempt finding. Rule 6.108 provides if an appeal is initiated by filing the wrong form of review, we will not dismiss the appeal but will proceed as if the correct form of review had been requested. The State asserts the notice of appeal was necessary to appeal the probation revocation, and as such, the notice cannot serve "double duty" as also a writ of certiorari for the contempt finding.

We note that the no-contact order arose out of the initial stalking and criminal mischief charges and deferred judgment. Thereafter, both the violation of the no-contact order and the revocation of probation proceeded under the same district court docket number. In addition, sentencing on the no-contact order violation and the hearing on the revocation of probation took place in a combined hearing. The notice of appeal filed by Lindell stated that he appeals from "the final judgment made and entered in this matter and from each and every ruling adverse to said defendant during the progress of this cause pending said judgment."

---

[1] The State asserts there is some question as to whether the district court proceeded to find a violation of the no-contact order as a simple misdemeanor or contempt finding under Iowa Code section 664A.7(5). If the court proceeded under a simple misdemeanor, the proper form of appeal would have been an application for discretionary review. Iowa Code § 814.6(2)(d). If the court proceeded under a contempt finding, the proper form of appeal would have been a writ of certiorari. Iowa Code § 665.11. We find based on our review of the record that the court found Lindell in contempt for violating the no-contact order and did not punish the violation as a simple misdemeanor. This finding is based on the court sentencing Lindell to sixty days in jail for the violation. The maximum sentence for a simple misdemeanor under the sentencing guidelines is thirty days in jail. *See* Iowa Code § 903.1(a). The maximum sentence for contempt in the district court is six months in jail. *See* Iowa Code § 665.4(2).

If Lindell had filed a notice of appeal to seek review of only the contempt finding, we would have found rule 6.108 preserved the issue for our review despite not being in the form of a petition for writ of certiorari. We see no reason to depart from this result simply because the notice of appeal also served to permit Lindell to seek review of the revocation of his probation. The State does not assert it was somehow misled to its irreparable harm when Lindell filed one notice of appeal to seek review of both the contempt finding and the revocation of his probation. Where there has been substantial compliance with the forms and requisites of the statutes or rules of the court, we will liberally construe the notice of appeal to preserve the right of review and permit a hearing on the merits. *Iowa Dep't of Human Servs. ex rel. Greenhaw v. Stewart*, 579 N.W.2d 321, 323–24 (Iowa 1998) (citing 4 C.J.S. *Appeal & Error* § 371, at 421 (1993)).

IV. SUBSTANTIAL EVIDENCE.

Lindell asserts there is no evidence to demonstrate he committed a willful and deliberate violation of the no-contact order or a violation of a condition of his probation as there was no finding by the district court that he knew A.C. was working at the furniture store when he allegedly was found staring at her through the window. While he admits the no-contact order prevented him from initiating contact or communicating with A.C., the order "certainly does not prevent him from looking at her if she unexpectedly appears in his field of vision." Upon our review of the record, we find there was substantial evidence to support the district court's decision finding Lindell guilty of a willful and deliberate violation of the no-contact order.

A.C. testified at trial she had worked at the furniture store for at least five months before the incident. The store is managed by her brother. On the day in question, she was doing paperwork in the office which has a full window to the parking lot. She was facing the wall and felt as if someone was staring at her. She looked out the window and recognized Lindell's truck. She described that the vehicle was not pulled into a parking spot in front of the store but was parked behind the front spots parallel to the building. She estimated the eye contact with Lindell lasted a solid five to ten seconds, and then Lindell drove away. Frightened by Lindell's presence, A.C. called her brother as she was the only employee at the store at that time. After discussing the incident with her brother, A.C. contacted the police to report the incident.

Lindell points out that the windows on the front of the store have a mirrored reflection, as shown in the photograph admitted into evidence. He argues there was no way he could see inside the store to see who was working in the office. When this was pointed out to A.C., she explained that for a furniture store, it is important for passersby to see the merchandise available for purchase, so the windows are only slightly tinted for protection from the sunlight. She testified before she enters the store, she is able to see through the tinted windows—including seeing people in the office where she was sitting that day.

When Lindell was questioned about his presence in the area of the store, he gave the police officer multiple explanations. One of these explanations was that he was looking for A.C.'s brother. He also asserted he may have been at a nearby gas station, going to lunch, working for a friend in the area, or cutting through the parking lot to avoid the intersection light. At the hearing Lindell

asserted that the reason he gave so many explanations for his presence was that the police officer did not tell him a time and date of the alleged violation so he just gave every reason he might have been in the area on any particular day.

We find the State provided substantial evidence to prove beyond a reasonable doubt Lindell willfully and deliberately violated the no-contact order. A.C. testified Lindell stopped his vehicle next to the place of her employment and stared at her. He made consistent eye contact with her for five to ten seconds, which frightened her. As this incident supported the violation of the no-contact order, resulting in the contempt finding, and as Lindell stipulated to the finding at his revocation hearing, we find sufficient evidence also supports the revocation of his probation.

V. *KEUTLA* APPLICATION.

Next, Lindell claims the district court was not authorized to impose both a jail term for the violation of the no-contact order, in a contempt proceeding, and a prison term upon the revocation of his probation from his deferred judgment for the same incident. He cites *Keutla*, 798 N.W.2d at 735, for support for his assertion.

In *Keutla*, the defendant was granted a deferred judgment arising out of a drug manufacturing charge. *Id*. at 732. After the defendant was charged with several rule violations arising out of her stay at a residential correctional facility, the State sought to revoke her probation and impose judgment. *Id.* At the hearing, the district court revoked the probation, imposed and then suspended a prison sentence, ordered probation continued, and also ordered the defendant to serve six months in jail for contempt. *Id.* The supreme court ruled the district

court could impose only one of four sentencing options provided in Iowa Code section 908.11(4) when addressing probation violations. *Id*. at 734. The court may: "(1) continue probation with or without altering the terms; (2) continue probation, but hold the defendant in contempt and impose a jail term; (3) continue probation and place the defendant in a violator facility; *or* (4) revoke probation and impose a sentence for the original conviction." *Id*. at 733. Because the district court imposed two of the four options, the case had to be remanded to the district court for resentencing. *Id*. at 735.

Because we find *Keutla* inapplicable to this case, we find the district court did not err in imposing a sentence for contempt based on the violation of the no-contact order and imposing sentence for the original conviction. In this case, unlike *Keutla*, Lindell was subject to the terms of his probation as a result of his deferred judgment, as well as, being subject to a no-contact order. While the same incident—violation of the no-contact order—resulted in both a contempt finding and the revocation of Lindell's probation, the sentences were imposed as a result of two separate adjudications. Both sentences were not imposed under section 908.11(4) as in *Keutla*. *See id*. at 734. Lindell was found guilty of contempt and sentenced as a result of his violation of the no-contact order under Iowa Code section 664A.7(1).[2] Because Lindell violated the no-contact order, he was also in violation of his probation, which provided he was to obey all laws. Thus, the court properly imposed only one sentencing option under section 908.11(4) as a result of Lindell's violation of his probation: "revoke probation and

[2] Iowa Code section 664A.7 provides: "Violation of a no-contact order issued under this chapter or a protective order issued pursuant to chapter 232, 236, or 598, including a modified no-contact order, is punishable by summary contempt proceedings."

impose a sentence for the original conviction." *Id*. at 733. As the district court's imposition of both a sentence for contempt and sentences for the original convictions was within the court's authority, we find no error.

VI. SENTENCING DECISION.

Finally, Lindell asserts the district court abused its discretion in sentencing him to prison for a total of up to six years on his original convictions.[3] Lindell claims the court's statements at sentencing show it sentenced him to prison for the sole reason that it felt Lindell posed a danger to A.C. and the community and ordered the sentences to run consecutively solely because it wanted to make the sentence as long as possible. Lindell believes the court abused its discretion because it must consider more than one factor. He also claims there is no evidence he posed a danger to A.C. or the community at large, and the statement made to justify the consecutive sentence was not a valid explanation of its sentencing decision.

The same district court judge that presided over the contempt hearing also presided over the probation revocation hearing. At the revocation hearing, the court stated:

> The Court has considered all aspects of this case, including the previous history of this criminal case, and the circumstances of the violation that brings us here today. And the Court finds, first of all, that the underlying offense is quite a serious offense in the Court's estimation. It demonstrates a repeated pattern of conduct toward an individual, which in my estimation, makes Mr. Lindell a threat to the community. That was followed by this incident which occurred

[3] Lindell was sentenced to a maximum term of incarceration of five years on the stalking conviction and a maximum term of incarceration of one year on the criminal mischief conviction. The district court ordered the sentences to run consecutively.

> approximately two weeks after sentencing.[4] Which, after hearing the evidence, the Court finds did involve a very intentional and very serious violation of a no-contact order, which had been put in place at the time of sentencing.
>
> In sum, the Court does estimate that Mr. Lindell, in his conduct, is a threat to this particular victim and is a threat to the community, and it is his conduct that has put him here today, and it has put this case in a position where the Court determines that, first of all, revoking the deferred sentence is appropriate.

The court went on to say, after announcing its sentence:

> The Court has given serious consideration to the Defendant's request for probation in this matter, and the Court determines that based upon the history of this case, the criminal conviction history as reflected in the presentence investigation report, when taken into account in connection with this particular violation, the Court concludes that a sentence of incarceration for the protection of this particular individual and the community is the most appropriate sentencing option in this case. Therefore, the Court will not suspend the sentences.

The following day, the court sua sponte scheduled a supplemental hearing as it was not satisfied it had specifically articulated the reasons for imposing consecutive sentences. The court stated: "[F]irst of all, the court imposed consecutive sentences because the underlying offenses are separate and distinct offenses and the Court concluded, in addition to determining incarceration was the appropriate sentencing option, that the length of that incarceration was such that consecutive sentences should be imposed."

The district court must state on the record the reasons for imposing particular sentences. *State v. Johnson*, 445 N.W.2d 337, 342 (Iowa 1989). It is not necessary that the court elaborate at length the reasons for its sentence, a statement can even be "terse and succinct, so long as the brevity of the court's

[4] We noted the violation of the no-contact order occurred only five days after sentencing, not two weeks as the district court stated.

statement does not prevent review of the exercise of the trial court's sentencing discretion." *Id.* at 343. The reason for the imposition of consecutive sentences needs to be articulated, but it is not required to be specifically tied to the impositions of consecutive sentences. *State v. Delaney*, 526 N.W.2d 170, 178 (Iowa Ct. App. 1994). The reasons may be found in the reasons expressed for the overall sentencing plan. *Id.*

Here the court expressed concern that the underlying offenses of stalking and criminal mischief represented a serious pattern of conduct toward A.C. that made Lindell a threat to A.C. and to the greater community. In addition, the court was particularly concerned with what it described as an "intentional and very serious violation of a no-contact order" only days after the no-contact order was put into place at the previous hearing, when judgment was deferred. The court also considered Lindell's criminal history as detailed in the presentence investigation report which included multiple alcohol related crimes and assaultive behaviors. The charges reflected that there had been other no-contact orders put into place to protect this victim and other no-contact order violations over the past year.[5] We find based on the record in this case that the court did not abuse its discretion in sentencing Lindell to incarceration and in ordering the sentences to run consecutively.

[5] Based on the presentence investigation completed in this case, it appears the initial no-contact order put in place to protect this victim was granted in April of 2010, as a result of an altercation between the couple in a hotel in Urbandale, Iowa. The July 11, 2010 incident that resulted in the stalking and criminal mischief charges at issue in this case, also resulted in a finding of contempt for violating the first no-contact order. Another incident occurred on August 23, 2010, wherein it appears another no-contact order was granted. At the sentencing on January 20, 2011, the district court issued a new no-contact order, which is at issue in this case, in order to ensure the no-contact order had the correct file number after the files for the charges of July 11 and August 23 were consolidated.

We therefore affirm the district court's finding of contempt, its revocation of Lindell's probation, and its imposition of consecutive sentences of incarceration.

AFFIRMED.