

IN THE COURT OF APPEALS OF IOWA

No. 2-404 / 11-1737
Filed June 27, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DUANE LEE KNOWLES,
Defendant-Appellant.

Appeal from the Iowa District Court for Webster County, Kurt L. Wilke,
Judge.

Duane Knowles appeals the imposition of a consecutive sentence
following his guilty plea. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie Knipfer, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon Hall, Assistant Attorney
General, Ricki Osborn, County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

DANILSON, J.

Duane Knowles appeals the sentence imposed after his guilty plea. At the time of his sentencing hearing for the conviction before the court, Knowles was already incarcerated on a different charge. He alleges the sentencing court failed to provide a reason for imposing a sentence to run consecutively to the sentence he was already serving and requests remand for resentencing. Upon our review, we conclude the district court's overall sentencing plan sufficiently expresses the court's reasons for imposing a consecutive sentence. We affirm.

I. Background Facts and Proceedings.

Duane Knowles pled guilty to theft in the second degree, pursuant to a plea agreement with the State. At the plea hearing, the prosecutor pointed out that Knowles was already incarcerated on another charge, and that a sentence imposed on the instant theft charge could be run consecutively or concurrently. Knowles told the court he had talked with his attorney about how his sentences might affect each other. He expected to be discharged from the first sentence within three weeks of the sentencing hearing.

The presentence investigation report recommended, and the State requested, a sentence of incarceration. The State noted Knowles had been on probation when he committed the offense that brought him before the court. Because the offense for which Knowles was being sentenced was different from that for which he was already incarcerated, the State also requested the pending sentence be ordered to run consecutively to his pre-existing sentence. The district court sentenced Knowles to an indeterminate term of five years, to be served consecutively to any sentence he was already serving.

During the sentencing hearing, Knowles explained he had taken numerous classes in prison so he was not setting himself “up for failure again.” The court noted, “[T]hat’s great that you’ve taken the classes and everything, but apparently they haven’t done you much good. That’s the problem.” The court then stated:

At some point in time when we look at somebody’s record, especially your record, it goes on for about three pages, we begin to think let’s just forget about rehabilitation and think about incarceration and warehousing.

The longer we keep you off the street, the less inclined you are to have more crime. Because you’re a one-man crime spree. Your criminal history goes back to the 1980’s and almost every year from that point on. And you’ve been given probation after probation and suspended jail and then you had your—finally a probation revoked.

And I’m sorry, Mr. Knowles, but this court has to agree with the Department of Correction’s recommendation. This court cannot see fit to put you back on the street. And with a criminal history you’ve had—in fact, you’ve continued to commit crimes even after you’ve had all the classes.

After some further discussion regarding the impact upon Knowles’ victim, the court imposed a term not to exceed five years and stated the “sentence of incarceration, however, shall run consecutive to any sentence for which the Defendant is currently serving.”

II. Error Preservation and Standard of Review.

Challenges to illegal sentences are not subject to the usual error preservation and waiver rules. Iowa R. Crim. P. 2.24(5)(a); *State v. Woody*, 613 N.W.2d 215, 217 (Iowa 2000).

We review the district court’s imposition of a sentence for abuse of discretion. *State v. Barnes*, 791 N.W.2d 817, 827 (Iowa 2010). Abuse of discretion occurs when a court “exercises its discretion on grounds clearly

untenable or to an extent clearly unreasonable.” *Id.* “The district court enjoys a strong presumption in its favor which will not be overcome absent an affirmative showing of abuse by the defendant.” *State v. Sumpter*, 438 N.W.2d 6, 10 (Iowa 1989).

III. Discussion.

“If a person is sentenced for two or more separate offenses, the sentencing judge may order the second or further sentence to begin at the expiration of the first or succeeding sentence.” Iowa Code § 901.8 (2011).

A sentencing judge must state, on the record, its reason for selecting a particular sentence. Iowa R. Crim. P. 2.23(3)(d); *Barnes*, 791 N.W.2d at 827. The court must also provide reasons for imposing consecutive sentences. *Barnes*, 791 N.W.2d at 827.

However, the court’s reasons for imposing consecutive sentences may be found among the reasons expressed for the overall sentencing plan. *Barnes*, 791 N.W.2d at 827-28; *State v. Hennings*, 791 N.W.2d 828, 838-39 (Iowa 2010). “A statement may be sufficient, even if terse and succinct, so long as the brevity of the court’s statement does not prevent review of the exercise of the trial court’s sentencing discretion.” *Hennings*, 791 N.W.2d at 838 (quoting *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989)).

The court spoke at length identifying the factors it considered in its sentencing determination. First, the court noted that a presentence investigation report had been prepared and reviewed. After giving Knowles an opportunity to correct any errors in the report and to make a statement, the court accepted the

recommendations of the department of corrections and the county attorney, observing, "This court cannot see fit to put you back on the street."

As in *Barnes*, the sentencing judge referenced Knowles' extensive criminal history as justification for the sentence imposed. 791 N.W.2d at 828. Here, the court specifically noted a record of offenses spanning twenty-five years, with convictions occurring almost every year, and countless sentences of probation, the most recent of which ended in revocation.

While Knowles demonstrated he took classes available to him during incarceration, the sentencing judge determined the classes had not reformed his predilection for committing crimes. Knowles also testified during the sentencing hearing that he expected to be discharged from his incarceration "within the next three weeks." Notwithstanding, the court noted the futility of another attempt at rehabilitation and the necessity of removing Knowles from society to stymie his "one-man crime spree" stating:

At some point in time when we look at somebody's record, especially your record, it goes on for about three pages, we begin to think let's just forget about rehabilitation and think about incarceration and warehousing. The longer we keep you off the street, the less inclined you are to have more crime.

Clearly these reasons reflect why the sentencing judge rejected probation or a concurrent sentence and imposed the longest period of incarceration, a consecutive sentence, to protect the community from any further offenses.

Especially given the fact the sentencing judge only had one conviction before him, it was not necessary to specify which of the many factors influencing his ultimate sentencing determination also applied to his decision to order the sentence he imposed to run consecutively to a different sentence that the

defendant was already serving. This record provides a sufficient basis upon which to review the discretion exercised by the trial court. *Johnson*, 445 N.W.2d at 343. We find no abuse of discretion.

IV. Conclusion.

The district court spoke at length identifying the factors that influenced its sentencing decision. “It is apparent to us that the district court ordered the defendant to serve his sentences consecutively as part of an overall sentencing plan.” *Hennings*, 791 N.W.2d at 839 (quoting *Johnson*, 445 N.W.2d at 343). Finding no abuse of discretion, we affirm.

AFFIRMED.