

IN THE COURT OF APPEALS OF IOWA

No. 2-635 / 11-1830
Filed August 22, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LEE LORENZO ROBERTS,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark J. Smith,
Judge.

Defendant appeals his sentences for possession of marijuana with the intent to deliver and driving while barred asserting the court abused its discretion in imposing consecutive sentences and the court imposed an illegal sentence.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

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

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Michael J. Walton, County Attorney, and Joe Grubisich, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

MULLINS, J.

The defendant, Lee Lorenzo Roberts, appeals his sentences following his guilty plea to possession of marijuana with the intent to deliver, in violation of Iowa Code section 124.401(1)(d) (2011), and driving while barred, in violation of section 321.561, contending that the district court abused its discretion in imposing consecutive sentences and erred in ordering the suspension or revocation of the Roberts's driver's license to begin at the time of Roberts's release from incarceration. For the reasons stated herein, we affirm in part, vacate in part, and remand.

I. Background Facts and Proceedings

On March 30, 2011, Davenport police officers observed the defendant, Lee Lorenzo Roberts, driving a vehicle at forty-seven miles per hour in a thirty-mile-per-hour zone. Officers executed a traffic stop. At the time of the stop, Roberts was barred from driving. When officers approached the vehicle, they observed Roberts putting something in his mouth. Roberts gagged on the item. The officers believed Roberts was attempting to swallow illegal drugs. Officers directed Roberts out of the car and requested to look in his mouth. Roberts did not initially comply with the officers' request. Roberts eventually spit out two baggies of marijuana. An officer discovered another bag containing marijuana in Roberts's sock. When the officers asked about the marijuana, Roberts stated that he was having trouble making ends meet.

On April 25, 2011, the State charged Roberts with possession of marijuana with the intent to deliver and driving while barred. On September 14,

2011, Roberts pleaded guilty pursuant to a plea agreement which allowed the parties to make sentencing recommendations.

Prior to sentencing the district court ordered the completion of a presentence investigation (PSI) report. The PSI report indicated Roberts had “at least twelve convictions for Driving Under Suspension/Barred” and had several prior charges for possession of a controlled substance. Although the PSI report did not oppose concurrent sentences, it recommended that the court sentence Roberts to incarceration.

On October 13, 2011, the district court held a sentencing hearing. The State recommended incarceration with consecutive sentences. The court addressed the defendant, in relevant portion, as follows:

THE COURT: Mr. Roberts, I have looked at your presentence investigation. You have a lengthy criminal history, one of which was armed robbery in Chicago, another one was assault in Davenport. And the Court views those as reasons for incarceration. Given the fact that you were—you have already been sentenced as an habitual violator, have you not?

THE DEFENDANT: No.

THE COURT: Didn't they make that concurrent with your parole? Driving While Barred?

MR. BELL: [defense counsel]: Oh, yeah. He's been sentenced on Driving While Barred. Haven't you?

(An off-the-record discussion was had between Attorney Bell and the Defendant.)

MR. BELL: Hold on. Let me check my files. Make sure I understand. He had his parole revoked on that.

THE COURT: But he had another Driving While Barred in June of 2011, according to this, where he was sentenced to 90 days in jail.

THE DEFENDANT: Oh, yeah.

THE COURT: Given the fact that you had that prior Drive While Barred, the Court finds that consecutive sentence[s] are warranted.

The district court sentenced Roberts to a term of incarceration not to exceed five years for possession of marijuana with intent to deliver and two years for driving while barred, to be served consecutively. The district court's order stated, "[Roberts's] license to drive a motor vehicle in the State of Iowa is suspended for a period of 180 days, which shall begin at the time of your release from incarceration." Roberts now appeals the decision to impose consecutive sentences and the decision to delay the suspension or revocation of his driver's license until his release from incarceration.

II. Standard of Review

This court reviews sentencing decisions within statutory limits for abuse of discretion. *State v. Valin*, 724 N.W.2d 440, 443–44 (Iowa 2006). Review of the legality of a sentence is for errors at law. *Id.*

III. Consecutive Sentences

Iowa Code section 901.5 requires a sentencing court to exercise discretion to determine an appropriate sentence. This court will find an abuse of discretion only if the sentencing court acts on "grounds clearly untenable or to an extent clearly unreasonable." *State v. Laffey*, 600 N.W.2d 57, 62 (Iowa 1996). A sentencing court should exercise its discretion only after "weigh[ing] and consider[ing] all pertinent matters in determining a proper sentence, including the nature of the offense, the attending circumstances, defendant's age, character and propensity, and chance for reform." *Id.*

The district court demonstrates the exercise of its discretion by stating the reasons for the sentence on the record. *State v. Thomas*, 547 N.W.2d 223, 225

(Iowa 1996). Iowa Rule of Criminal Procedure 2.23(3)(d) requires the sentencing court to “state on the record, its reasons for selecting the particular sentence.” While a detailed explanation is not necessary, the sentencing court must give at least a cursory explanation for the discretionary action to facilitate appellate review. *State v. Oliver*, 588 N.W.2d 412, 414 (Iowa 1998).

Here, the district court exercised its discretion to impose consecutive sentences after reviewing the PSI report. The PSI report stated that Roberts had “at least twelve convictions for Driving Under Suspension/Barred” and several prior charges for possession of a controlled substance. The district court explained that a review of the PSI report revealed Roberts “had a lengthy criminal history” which included convictions for armed robbery and assault.

The district court’s review of the PSI report and discussion of Roberts’s criminal history satisfactorily facilitates appellate review of the court’s discretionary action. See *id.* (requiring at least a cursory explanation for discretionary sentencing decisions). We find the district court’s stated reasons were not “clearly untenable or clearly unreasonable.” *Laffey*, 600 N.W.2d at 62. As we find the district court did not abuse its discretion in sentencing Roberts to consecutive terms, we affirm the district court’s decision.

IV. Driver’s License Revocation

“The legislature possesses the inherent authority to prescribe punishment for crime, and the sentencing authority of courts is subject to that power.” *State v. Halterman*, 630 N.W.2d 611, 613–14 (Iowa Ct. App. 2001). A sentence

beyond the statutory limits is void. *State v. Ohnmacht*, 342 N.W.2d 838, 842 (Iowa 1983).

Pursuant to Iowa Code Section 901.5(10)(a), Roberts's conviction for possession of marijuana with intent to deliver required the district court "to revoke the defendant's driver's license or motor vehicle operating privilege for a period of one hundred eighty days, or to delay the issuance of a driver's license for one hundred eighty days after the person is first eligible." This code section further provides that, "[i]f the person's operating privileges are suspended or revoked at the time of sentencing, the order shall provide that the one hundred eighty-day revocation period shall not begin until all other suspensions or revocations have terminated." Iowa Code § 901.5(10).

In the present case, the district court's order stated that, "[Roberts's] license to drive a motor vehicle in the State of Iowa is suspended for a period of 180 days, which shall begin at the time of your release from incarceration." The State concedes that the relevant period should begin after the expiration of any other suspension or revocation, rather than Roberts's release from incarceration. The Iowa Code provides no authority for an order to delay the suspension or revocation of a defendant's driver's license until after the defendant's release from incarceration. *Id.* The district court's decision to delay Robert's revocation or suspension in this manner was an error at law. For these reasons, we vacate this portion of the district court's sentencing order, and remand the case to the district court for entry of an order providing the suspension of Roberts's driver's license shall begin at the termination of all other suspensions or revocations.

V. Conclusion

We affirm Roberts's consecutive sentences for possession of marijuana with intent to deliver and driving while barred. We vacate the sentencing order delaying the suspension of Roberts's driver's license and remand to the district court for entry of an order providing the suspension of Roberts's driver's license shall begin at the termination of all other suspensions or revocations.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.