

IN THE COURT OF APPEALS OF IOWA

No. 3-108 / 12-0859
Filed April 10, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SAMUEL MEDINA GOMEZ,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Richard G. Blane II,
Judge.

Samuel Medina Gomez appeals from multiple sentences. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas Tauber, Assistant Attorney
General, John P. Sarcone, County Attorney, and Michael Hunter, Assistant
County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

EISENHAUER, C.J.

Samuel Medina Gomez appeals from the sentences imposed following his conviction of multiple sex-related charges. He contends the court failed to specify reasons for imposing consecutive sentences and erred in giving conflicting and inaccurate reasons for denying probation on some convictions. We affirm.

Gomez was charged with twelve sex-related counts involving four minors. Following a bench trial, he was found guilty of second-degree sexual abuse on counts 1, 4, and 5; assault with intent to commit sexual abuse on count 2; indecent contact with a child on counts 3, 8, and 11; and dissemination of obscene material to a minor on count 12.

At sentencing the court imposed twenty-five year sentences for the second-degree sexual abuse convictions, a one-year sentence for the dissemination of obscene material conviction, and two-year sentences for each of the assault and indecent contact convictions. The court gave its explanation:

The sentences on Counts 4 and 5, since they involve the same victim, shall be served concurrently but shall be served consecutively to Counts 1, 2, 3, 8, 11, and 12, and those counts will be served concurrently with each other.

Granting of probation in this matter is denied because probation would not provide reasonable protection of the public and maximum opportunity for rehabilitation of the defendant. The Court has considered the age of the defendant as well as the defendant's prior criminal record or lack thereof and that probation would lessen the seriousness of these offenses. Probation is not allowed as to Counts 1, 4, and 5.

The written sentencing order mirrored the court's oral explanation except it refers to "the defendant's prior criminal record" but omits the phrase "or lack thereof."

We review a district court's sentence for correction of errors at law. Iowa R. App. P. 6.907; *State v. Rodriguez*, 804 N.W.2d 844, 848 (Iowa 2011). Discretionary sentencing decisions are reviewed for an abuse of discretion. *State v. Barnes*, 791 N.W.2d 817, 827 (Iowa 2010). An abuse of discretion is found only when a court exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable. *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). A court's decision to impose a particular sentence within the statutory limits is cloaked with a strong presumption in its favor. *State v. Bentley*, 757 N.W.2d 257, 262 (Iowa 2008). The court is to "state on the record its reasons for selecting the particular sentence." Iowa R. Crim. P. 2.23(3)(d). The stated reasons need not be detailed, as long as "the brevity of the court's statement does not prevent review" of the decision. *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989).

Gomez contends the court failed to specify reasons for imposing the consecutive sentences and it gave conflicting and inaccurate reasons for denying probation on certain counts.

Denying Probation. Gomez argues the court's statement on the record of its reasons for denying probation included his *lack* of a criminal record. Gomez argues the court "erred in considering an improper, non-existent factor in denying probation." See *State v. Carrillo*, 597 N.W.2d 497, 501 (Iowa 1999) ("When a trial court considers an improper sentencing factor, we require a remand for resentencing.").

The sentencing order listed several factors the court considered when deciding whether to allow probation for any of the offenses. They include factors both in favor of and against granting probation. See *State v. Leckington*, 713 N.W.2d 208, 216 (Iowa 2006) (providing a district court “is to weigh all pertinent matters”). It is not improper for the court to weigh the fact a defendant has no prior criminal record, as was evident in this case from the court’s review of the presentence investigation. In fact, the court was not required to give reasons for not choosing probation. See *State v. Vanover*, 559 N.W.2d 618, 635 (Iowa 1997) (noting a court is not required to give reasons for rejecting a sentencing option). We conclude the court’s statements on the record and its written sentencing order demonstrate a proper exercise of discretion, not an abuse of discretion.

Consecutive Sentences. There were three second-degree sexual abuse counts, two of which (Counts 4 and 5) involved the same victim. The court ordered those two sentences of not to exceed twenty-five years to be served concurrently, noting they involved the same victim. The court imposed a period of incarceration not to exceed twenty-five years on the other second-degree sexual abuse count, to be served concurrently with all the other sentences. Gomez questions “why this victim should be treated differently than the other three victims under Counts 1, 2, 3, 8, 11, and 12” because the court ordered the sentences on all these counts be served concurrently.

Defense counsel asked the court to impose all eight sentences “concurrent on one sex second.” The court noted the “numbers of children” involved. See *Leckington*, 713 N.W.2d at 216 (noting “all pertinent matters”

include “the nature of the offense” and “the attending circumstances”). We conclude the court gave adequate reasons for imposing consecutive sentences.

Finding no abuse of discretion, we affirm.

AFFIRMED.