

IN THE COURT OF APPEALS OF IOWA

No. 3-312 / 12-1755
Filed April 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

NICHOLAS PAUL CAIN,
Defendant-Appellant.

Appeal from the Iowa District Court for Osceola County, Don E. Courtney (plea) and John P. Duffy (sentencing), Judges.

A defendant appeals the sentence imposed following his conviction.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, and Robert Hansen, County Attorney, for appellee.

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

MULLINS, J.

Nicholas Cain appeals from the sentence entered after his plea of guilty to failure to register as a sex offender, second or subsequent offense. Cain argues the court abused its discretion in imposing the sentence as consecutive to a sentence previously imposed in another county and for which he was on parole when he committed the present offense. We affirm.

While Cain was released on parole, he committed the current offense for which he was charged and entered a guilty plea. The court accepted his plea and sentenced him to a term of incarceration of no more than five years. Acknowledging that the real issue before the court was whether to run this sentence concurrently or consecutively with the prior sentence, the court reviewed the presentence investigation report and considered Cain's twenty-four prior convictions, of which six were felonies. The court recited that it also considered Cain's age, his employment and family circumstances, the nature of the offense, and the recommendations of the presentence investigation report and of the State.

Iowa Code section 908.10 (2011) provides that when a person is convicted and sentenced to incarceration for a felony that was committed while the person was on parole, the "new sentence of imprisonment for conviction of a felony shall be served consecutively with the term imposed for the parole violation, unless a concurrent term of imprisonment is ordered by the court."

The sentencing court clearly exercised its discretion by providing reasons for denying a concurrent term and proceeding with the section 908.10 statutory

presumption of a consecutive sentence in this case. See generally *State v. Thomas*, 547 N.W.2d 223, 225–26 (Iowa 1996) (stating that when a sentence is not mandatory the court must exercise its discretion in determining what sentence to impose). We therefore affirm Cain’s sentence.

AFFIRMED.