

IN THE COURT OF APPEALS OF IOWA

No. 3-373 / 12-1531
Filed May 15, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SEAN DANA SCOTT,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Thomas G. Reidel (guilty plea) and Nancy S. Tabor (sentencing), Judges.

Sean Scott appeals from the sentence imposed after his guilty plea, asserting the district court erred in failing to provide specific reasons for ordering a sentence to be served consecutively with other sentences. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Vidhya K. Reddy, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Michael J. Walton, County Attorney, and Kimberly K. Shepherd and Kelly G. Cunningham, Assistant County Attorneys, for appellee.

Considered by Doyle, P.J., and Danilson and Mullins, JJ. Tabor, J., takes no part.

DOYLE, P.J.

Sean Scott appeals the sentence imposed after his guilty plea. He asserts the sentencing court failed to provide a reason for running his aggravated misdemeanor sentence consecutively to his felony sentences, and he requests remand for resentencing. We affirm, finding the court's rationale for the imposition of consecutive sentences is apparent from the overall sentencing plan.

I. Background Facts and Proceedings.

Scott was charged with a multiplicity of offenses including conspiracy to commit a non-forcible felony, arson, criminal mischief, possession of drugs, theft, and tampering with a witness. Scott and the State eventually reached a plea agreement. The agreement provided that Scott would plead guilty to the aggravated misdemeanor offense of theft in the third degree, as well as to two "class D" felony counts of conspiracy to commit a non-forcible felony. In exchange for the guilty pleas, the State agreed to dismiss the remaining charges and to not pursue a federal charge of felon in possession of a firearm. Further, the State agreed that at sentencing, it would recommend concurrent five-year terms of incarceration on the two felony offenses, with a consecutively imposed two-year term on the misdemeanor offense, for a total of an indeterminate term of seven years in prison. The plea was not conditioned upon concurrence of the court.

The court accepted Scott's written plea of guilty to the theft charge. Following a plea colloquy, the court also accepted Scott's oral pleas of guilty to the two counts of conspiracy to commit a non-forcible felony. The court stated that its decision on the acceptance or rejection of the plea agreement was

deferred pending receipt of a presentence investigation report (PSI). Later a PSI was filed with the court, which recommended incarceration but did not make any recommendations on whether the sentences on each offense should be served concurrently or consecutively. Ultimately, the court adjudged Scott guilty of the three charges and imposed the sentences recommended by the State, ordering the aggravated misdemeanor conviction to run consecutive to the two felony convictions for a total term of seven-years' incarceration.

Scott appeals, asserting the district court erred in failing to provide specific reasons for ordering the aggravated misdemeanor sentence to be served consecutively to the felony sentences.

II. Scope and Standards of Review.

Our review of a district court's sentence is limited to the correction of legal error. *State v. Rodriguez*, 804 N.W.2d 844, 848 (Iowa 2011). When the sentence imposed is within the statutory limits, we review for an abuse of discretion. *State v. Valin*, 724 N.W.2d 440, 444 (Iowa 2006). "An abuse of discretion is found when the court exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable." *State v. Barnes*, 791 N.W.2d 817, 827 (Iowa 2010). "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 court must state, on the record, its reason for selecting a particular sentence. *Barnes*, 791 N.W.2d at 827 (citing Iowa R. Crim. P. 2.23(3)(d)). The court must also provide reasons for imposing consecutive sentences. *Id.* “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.” *State v. Hennings*, 791 N.W.2d 828, 838 (Iowa 2010) (quoting *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989)).

At the sentencing hearing, the State made the recommendation required by the plea agreement that the two felony sentences run concurrent with each other and the aggravated misdemeanor sentence run consecutive to the felony sentences, for a total term of seven years’ incarceration. However, Scott requested the court run all three sentences concurrently for a total term of five years’ incarceration. Although Scott replied, “No ma’am,” when the court asked if there was anything he cared to say in mitigation of his sentencing, Scott’s wife and his mother both spoke and essentially requested the court enter the lesser term of incarceration. The court was not persuaded. Prior to sentencing Scott to the seven-year term of incarceration, the court explained to him:

I’ve had an opportunity to review all three PSI’s, and now the victim impact statement on the one, and incarceration is recommended in the [PSI]. While it’s true . . . the PSI shows that there’s no prior deferreds, and I am looking at a PSI^[1] with a—three full pages of—at least of adult criminal record, including time in jail, time in the Iowa Department of Corrections, assaultive and—type behaviors. I see in the report that [you have] completed the QCALM classes, victim impact classes, and corrective thinking classes, and [you are] still before the court continuing to address

¹ According to the PSI, Scott’s adult criminal history spans over seven years prior to the current charges and includes various periods of incarceration.

and find [yourself] in these same type of behaviors that [you have] had these classes for.

While I sympathize with your financial situation, part of that is, because you don't work, that your wife has to work so many jobs, and I'm very concerned that you're both projecting blame on the fact that the State won't help you rather than taking on some responsibility on your own self for getting a job and making you rely on the State.

I don't believe, because of those, that you're an appropriate candidate for a deferred sentence, and I also believe that, because you've got this long history and prior programming and DOC and community-based programming that you're not an appropriate candidate for a suspended sentence.

Here, the State agrees the court did not articulate separate reasons for imposing consecutive terms, but it argues the court was not required to specifically tie the reasons given to the imposition of consecutive sentences. We agree. 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; *Hennings*, 791 N.W.2d at 838-39. We look to the entire record to find the court's reasons for the sentence it imposed. See *State v. Delaney*, 526 N.W.2d 170, 178 (Iowa Ct. App. 1994).

We find the district court provides us with sufficient explanation for our review of the sentence imposed. While the court provided no explicit tie-in between its sentencing plan as a whole and its decision to impose the consecutive sentence, we find the court's reasoning is apparent from the overall sentencing rationale. See *Hennings*, 791 N.W.2d at 838. Finding no abuse of discretion, we affirm.

AFFIRMED.

Mullins, J., concurs; Danilson, J., concurs specially.

DANILSON, J. (specially concurring)

I specially concur as the majority opinion is consistent with the current state of the law. See *State v. Hennings*, 791 N.W.2d 828, 838-39 (Iowa 2010) (concluding the court gave adequate reasons for imposing consecutive sentences as gleaned from the overall sentencing plan). However, I suggest the time has come to either overrule *State v. Uthe*, 542 N.W.2d 810 (Iowa 1996), or renew the vigor of its principles.

In *Uthe* our supreme court reversed and remanded for resentencing stating,

The court, however, failed to give even a terse explanation of why it imposed consecutive, as opposed to concurrent, sentences for the three offenses. Nothing else in the sentencing colloquy could be read as a clue to the court's reasoning. More is required to enable a reviewing court to properly perform its duty.

542 N.W.2d at 816. Since *Uthe*, innumerable appeals have raised the issue of whether the trial judge gave adequate reasons for imposing consecutive sentences.

The purpose of requiring reasons for imposing consecutive sentences is to give the reviewing court a record to rely upon in determining if the trial court abused its discretion. *Id.* Our supreme court has also stated that “[a]lthough the reasons need not be detailed, at least a cursory explanation must be provided to allow appellate review of the trial court’s discretionary action.” *State v. Jacobs*, 607 N.W.679, 690 (Iowa).

The law has evolved since *Uthe* and now, if the reviewing court can determine if the consecutive sentences were “part of an overall sentencing plan,” the trial court’s statement is sufficient. *Hennings*, 791 N.W.2d at 839. Of course

trial judges would submit that the imposition of consecutive sentences is always a part of their overall sentencing plan, and it would be difficult to disagree with such an argument.

Occasionally, determining if the imposition of consecutive sentences is a part of the overall sentencing plan is not difficult. However, in most instances applying this standard is problematic. The reviewing court may seemingly make this determination without any evidence or hint of the reasons the trial court may have had in mind in imposing consecutive sentences. Our procedural rules require “[t]he court to state the reasons for selecting the particular sentence.” Iowa R. Crim. P. 2.23(3)(d). Perhaps it is time simply to look if the reasons stated are adequate for the sentences imposed or return to the principles announced in *Uthe*.