

IN THE COURT OF APPEALS OF IOWA

No. 3-475 / 12-1637
Filed June 12, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DAVID LEE MASINGALE,
Defendant-Appellant.

Appeal from the Iowa District Court for Story County, Steven P. Van Marel, District Associate Judge.

A defendant appeals his sentence asserting the district court failed to provide adequate reasons for imposing consecutive sentences. **AFFIRMED.**

Kimberly Voss-Orr of Law Office of Kimberly Voss-Orr, Ames, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Christopher Scott, Student Legal Intern, Stephen Holmes, County Attorney, and Mary Sirna, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

VOGEL, P.J.

David Masingale appeals from the sentence imposed following his guilty pleas to operating while intoxicated, third offense, in violation of Iowa Code section 321J.2 (2011), and driving while barred, in violation of Iowa Code section 321.561. He asserts the district court failed to state on the record its reasons for imposing consecutive sentences and argues, in the alternative, that the court abused its discretion in imposing consecutive sentences.

We review sentences imposed in a criminal case for correction of errors at law, and “[w]e will not reverse the decision of the district court absent an abuse of discretion or some defect in the sentencing procedure.” *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). A strong presumption cloaks a sentence that is within the statutory limits, and it will be reversed only if we are able to discern the district court exercised its discretion “on grounds or for reasons that were clearly untenable or unreasonable.” *Id.* The court must give reasons for imposing consecutive sentences, though the reasons need not be detailed. *State v. Barnes*, 791 N.W.2d 817, 827 (Iowa 2010).

At sentencing the State recommended consecutive sentences, while Masingale’s counsel argued for the sentences to be concurrent and for Masingale to be placed in the OWI offender program. The district court, in imposing consecutive sentences, stated:

It’s pretty clear, Mr. Masingale, that you have an extremely serious problem of using alcohol. It’s also clear that when you are drinking, you simply cannot stop driving motor vehicles. The record shows that in July of 2009 you were sentenced on an OWI third charge to the OWI offender program with a five-year prison term. You had that—you got paroled. You had your parole revoked. You finally discharged that parole in November of 2011 and got arrested

on this current charge of operating while intoxicated April 3rd of 2012.

Your criminal history shows a series of alcohol-related offenses. The presentence investigation shows that you have gone to treatment many times, and you are still abusing alcohol. You are still getting in your car and driving. You are still putting people at risk. Every time you operate a vehicle while intoxicated, Mr. Masingale, you place innocent people at risk of death or serious injury. Really it's just a matter of luck that you haven't killed somebody, that you haven't killed somebody's child or destroyed a family, and that you haven't been sentenced to serve a 25-year prison term.

At this stage of your life, Mr. Masingale, you are simply too dangerous of a person to be in the community, and I think everybody recognizes that. Really the only issue I guess is do I sentence you to the period of short-term incarceration in the OWI offender program or do I sentence you to the maximum sentences on the driving while barred and the OWI third charge.

Mr. Masingale, given that you just got discharged from parole in November of 2011, you just had an OWI third in July of 2009, I think the only responsible sentence I can impose here today would be five years on the OWI, two years on the driving while barred, and to order you to serve those consecutively for a period of seven years. I have absolutely no faith in your ability not to drink to the point of intoxication and get in a vehicle and drive. Our communities are simply not willing to accept the risks that you create when you operate a vehicle while intoxicated.

Mr. Masingale, you are one of the most dangerous people I've had in this courtroom for a long time. It's just a matter of time before you kill yourself or somebody else. Hopefully after serving this next period of incarceration you will finally decide it's time to stop drinking, and it's time to act like a mature responsible adult; but I don't think you're ready to do that. I think the only option that's available that will protect our community and hopefully rehabilitate you is to sentence you to prison for as long of a period of time as possible, because I think anything less than that will do nothing to rehabilitate you and will not provide protection for our community.

We find the court provided adequate reasons for imposing consecutive sentences and did not abuse its discretion in deciding to impose that sentence. We therefore affirm the decision of the district court pursuant to Iowa Court Rule 21.26(1)(a) and (e).

AFFIRMED.