

IN THE COURT OF APPEALS OF IOWA

No. 3-613 / 12-1634
Filed July 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL WAYNE CONNOR,
Defendant-Appellant.

Appeal from the Iowa District Court for Lucas County, Gary G. Kimes,
Judge.

Connor appeals his sentence, claiming the district court abused its
discretion by considering improper factors and failing to consider mitigating
factors when imposing consecutive sentences. **AFFIRMED.**

Clemens A. Erdahl of Nidey Erdahl Tindal & Fisher, Cedar Rapids, for
appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney
General, and Paul M. Goldsmith, County Attorney, for appellee.

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

VOGEL, P.J.

Wayne Connor pleaded guilty to two counts of sexual abuse in the third degree and one count of sexual exploitation of a minor. He was sentenced on August 20, 2012, to a ten-year indeterminate sentence on each count of sexual abuse, to run consecutively, and a ten-year indeterminate term on the sexual exploitation count, to run concurrently to the first sexual abuse sentence. At sentencing, the State dismissed the other four counts of sexual abuse in the third degree contained in the trial information.

These charges arise from Connor's sexual abuse of his fifteen-year-old foster child, which occurred from June 22, 2010, until August 20, 2011. The abuse included daily intercourse, forced oral sex, attempted anal sex, videotaping, sending graphic text messages, and giving his victim pornography.

Connor now appeals his sentence. He claims the district court abused its discretion by considering improper factors while failing to consider mitigating factors when imposing consecutive sentences. Specifically, Connor asserts the court did not consider the fact the plea agreement called for the State to concur with the presentence investigation report's (PSI) sentencing recommendation, and the PSI did not recommend consecutive sentences. Connor further argues the court gave undue weight to non-expert opinions when evaluating his risk for recidivism, did not adequately consider his lack of criminal history, and did not properly acknowledge the community support.

We review a district court's decision to impose consecutive sentences for abuse of discretion. *State v. Leckington*, 713 N.W.2d 208, 216 (Iowa 2006). A court only abuses its discretion when it acts on clearly untenable grounds or to

an extent clearly unreasonable. *Id.* When applying this discretion, the court should

[w]eigh and consider all pertinent matters in determining proper sentence, including the nature of the offense, the attending circumstances, defendant's age, character and propensities and chances of his reform. The courts owe a duty to the public as much as to defendant in determining a proper sentence. The punishment should fit both the crime and the individual.

Id. (internal citations omitted).

Upon reviewing the transcript of the sentencing hearing, the district court did not rely on improper factors or fail to consider important factors in imposing consecutive sentences. Rather, it properly considered multiple pertinent issues, including Conner's possibility of rehabilitation, protection of the community, his age, employment and family circumstances, the fact the crimes were not forcible felonies, and the support Conner received from his neighbors, work associates, and friends. As to the nature of the crime, the court stated, "this is an egregious case. To think that a foster parent in the position of authority that he was would sexually abuse a fifteen-year-old girl over a period of at least fourteen months, it is just nearly unimaginable to this Court." As such, we find no abuse of the district court's discretion, and we affirm pursuant to Iowa Court Rule 21.26(1)(d) and (e).

AFFIRMED.