

IN THE COURT OF APPEALS OF IOWA

No. 7-434 / 06-1827
Filed October 12, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

PAUL ANTHONY BELL,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark D. Cleve,
Judge.

Paul Anthony Bell appeals the imposition of a consecutive sentence upon
his guilty plea to first degree theft as a habitual offender. **AFFIRMED AND
REMANDED.**

Brian Farrell, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Richard Bennett, Assistant Attorney
General, William E. Davis, County Attorney, and Amy DeVine, Assistant County
Attorney, for appellee.

Heard by Huitink, P.J., and Vogel and Baker, JJ.

BAKER, J.

Paul Anthony Bell appeals the imposition of a consecutive sentence upon his guilty plea to first-degree theft as a habitual offender. He contends that, because the trial court altered its written judgment entry after the sentencing hearing to order his sentence to run consecutively with prior sentences, his sentence should run concurrently with his prior sentences. The record demonstrates that a clerical error occurred. We remand for entry of an order nunc pro tunc to impose a consecutive sentence.

I. Background and Facts

On August 29, 2006, Bell was charged by trial information with first-degree theft in violation of Iowa Code section 714.2(1) (2005), three counts of forgery in violation of section 715A.2(2)(a)(3), third-degree burglary in violation of section 713.6A(1), conspiracy to commit a non-forcible felony in violation of section 706.3(2), and interference with official acts in violation of section 719.1(1). An amended information alleged Bell was a habitual offender under section 902.8.

On October 13, 2006, Bell reached a plea agreement with the Scott County Attorney's office. The memorandum of plea agreement, signed by Bell and his attorney, stated that, if Bell pled guilty to first-degree theft as a habitual offender, the other charges would be dismissed. It further stated, "[t]he sentence is to run consecutively to the sentences already imposed" in two other cases, where Bell had been sentenced to a total indeterminate term of fifteen years.

That same day Bell appeared for a plea hearing and entered a plea of guilty to first-degree theft as a habitual offender. The other charges were dismissed. The trial court asked Bell if he understood he would be sentenced as a habitual

offender and that the “sentence would run consecutive to any other sentence you have previously been sentenced to or are serving That means it is a back-to-back sentence that wouldn’t begin until you had finished serving those other sentences.” Bell responded that he understood. The court deferred acceptance of the guilty plea. Bell then sought immediate sentencing.

Upon his request that sentence be imposed that day, Bell was informed of and waived his right to file a motion in arrest of judgment and consented to sentencing less than fifteen days following his plea without the benefit of a presentence investigation report. The trial court then sentenced Bell to a term not to exceed fifteen years. At that time, although the court did state that it was sentencing Bell “as requested by the parties in that written plea agreement,” it did not make any statement as to whether the sentence was to run consecutively or concurrently to Bell’s prior sentences. The court calendar entry for October 13, 2006, contains a handwritten entry, signed by the trial judge, which states the sentence imposed is to run consecutively to Bell’s other sentences.

II. Merits

Bell appeals the imposition of a consecutive sentence, contending the trial court erred in altering its written judgment entry after the sentencing hearing to order his sentence to run consecutively with his prior sentences. “When a party asserts that an inconsistency exists between an oral sentence and a written judgment entry, we review the matter for correction of errors at law.” *State v. Hess*, 533 N.W.2d 525, 527 (Iowa 1995) (citations omitted).

Bell argues that his sentence should be upheld but revised to run

concurrently with his prior sentences. See *Dickerson v. Perkins*, 182 Iowa 871, 875, 166 N.W. 293, 295 (1918) (holding that, unless the sentence provides otherwise, sentences run concurrently).

“When a court imposes a sentence which statutory law does not permit, the sentence is illegal, and such a sentence is void and we will vacate it.” *Hess*, 533 N.W.2d at 527.

Iowa Code section 901.6 and Iowa Rule of Criminal Procedure 22(3)(d) provide that a court shall follow a two-step procedure in sentencing a criminal defendant. First, the court orally enters a pronouncement of the sentence on the record in the presence of the defendant, giving the court’s reasons for the sentence. Second, the court files a written judgment entry.

Id. (citations omitted). The rationale for requiring the court to state on the record its reason for selecting a particular sentence is to inform the defendant of the sentence received and the basis for that sentence. *State v. Lumadue*, 622 N.W.2d 302, 304 (Iowa 2001).

We find that any intimation that Bell might make that he did not know what sentence he received or the basis for it would simply be disingenuous. The record unambiguously demonstrates that the court sentenced Bell in accordance with his plea agreement. He entered into an agreement wherein certain charges were dropped, and he agreed to a consecutive sentence on the remaining charge. The trial court clearly indicated that it was imposing the sentence agreed to by the parties, in this case a consecutive sentence. The hearing began at 9:42 a.m., at which time the court accepted the guilty plea and, during that portion of the hearing, told Bell that the sentence to be imposed would be consecutive. The court proceeded to immediate sentencing at Bell’s request, wherein the court

articulated its reasons for the court's sentence and specifically referenced the plea agreement. The hearing concluded at 10:05 a.m. The entire guilty plea and sentencing took twenty-three minutes. All present knew what the deal was. It was discussed and agreed to by Bell.

“[W]here there is a discrepancy between the oral pronouncement of sentence and the written judgment and commitment, the oral pronouncement of sentence controls.” *Hess*, 533 N.W.2d at 528 (quoting *State v. Brydon*, 454 A.2d 1385, 1388 (Me. 1983)). The failure to accurately incorporate the sentence into the order was clearly a clerical error which may be corrected. See *id.* at 527 (“[W]hen a judgment entry incorrectly differs from the oral rendition of the judgment merely as a result of clerical error, the trial court holds the inherent power to correct the judgment entry.”).

Further, any error here is harmless. Where the court incorporates a plea agreement in the sentence, the sentence is “not the product of the exercise of the trial court's discretion.” *State v. Cason*, 532 N.W.2d 755, 756 (Iowa 1995) (quoting *State v. Snyder*, 336 N.W.2d 728, 729 (Iowa 1983)); see also *Hess*, 533 N.W.2d at 527 (“An error is clerical in nature if it is not the product of judicial reasoning and determination.”). Therefore, stating the reasons for imposition of the sentence would serve no useful purpose, and any failure to do so is harmless. *Cason*, 532 N.W.2d at 756 (citing *Snyder*, 336 N.W.2d at 729).

The failure to include the term “consecutive” in this case was clearly a clerical error which is appropriately corrected by an order nunc pro tunc. Iowa Rule Crim. P. 2.23(3)(g); *Hess*, 533 N.W.2d at 527. Because a calendar entry is

not the appropriate means to correct this clerical error, we remand for entry of an order nunc pro tunc to impose a consecutive sentence.

AFFIRMED AND REMANDED.