

IN THE COURT OF APPEALS OF IOWA

No. 8-174 / 07-0063
Filed April 9, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DARREN FRANCIS HINNERS,
Defendant-Appellant.

Appeal from the Iowa District Court for Calhoun County, Gary L. McMinimee, Judge.

Defendant appeals the consecutive sentences imposed by the district court following his pleas to involuntary manslaughter and assault causing bodily injury. **SENTENCE VACATED IN PART AND REMANDED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, and Cynthia Voorde, County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

VOGEL, J.

Darren Hinners pled guilty to involuntary manslaughter in violation of Iowa Code section 705.1(1) (2005) and assault causing bodily injury in violation of Iowa Code sections 708.1 and 708.2(2). The district court sentenced Hinners to five years in prison for the involuntary manslaughter conviction and one year in prison for the assault causing bodily injury conviction, and ordered the sentences to run consecutively. On appeal, Hinners asserts that the district court erred by failing to give specific reasons for the imposition of consecutive sentences. We agree, vacate this portion of his sentence, and remand for the district court to demonstrate its exercise of discretion regarding the imposition of consecutive sentences.

Our review of a sentence imposed in a criminal case is for correction of errors at law. Iowa R. App. P. 6.4. Under Iowa Rule of Criminal Procedure 2.23(3)(d), a district court must state on the record its reasons for selecting a particular sentence. *State v. Jacobs*, 60 N.W.2d 679, 690 (Iowa 2000). “Although the reasons need not be detailed, at least a cursory explanation must be provided to allow appellate review of the [district] court’s discretionary action.” *Id.* Furthermore, the district court must also give reasons for imposing consecutive sentences. *Id.*

At the sentencing hearing, the district court carefully explained its decision to impose a term of incarceration rather than a suspended sentence with probation. The district court weighed the appropriate factors, ultimately finding that probation was inappropriate in light of the defendant’s conduct. The written sentencing order stated: “For the reasons stated on the record, the Court

concluded that a suspended sentence with probation was not appropriate and that a sentence of incarceration should be imposed.” However, the district court did not explain its decision to impose consecutive sentences. *Compare id.* (discussing that the district court explained its reasons for incarceration but not consecutive sentences), *with State v. Johnson*, 445 N.W.2d 337, 342-43 (Iowa 1989) (discussing that the State requested consecutive sentences and the district court weighed numerous factors and “ordered the defendant to serve his sentences consecutively as part of an overall sentencing plan”). At the sentencing hearing and in the written sentencing order, the district court stated that the “sentences of incarceration shall run consecutively,” but did not refer to any reasons for that decision. In a motion to reconsider, Hinnners requested the court to suspend the sentences “or in the alternative to rule that the sentences may be served concurrently” The court, in denying the motion, stated: “This Court gave full consideration of this matter at the time of the sentencing hearing.”

While the district court may well have considered concurrent as opposed to consecutive sentences, the record simply does not disclose the court’s reasoning such that we are able to give the sentence the appropriate appellate review. *See Johnson*, 445 N.W.2d at 343 (discussing that the purpose of requiring the district court to state on the record the reason for imposing a consecutive sentence is to form a sufficient basis for appellate review).

Because the district court explained its decision to impose terms of incarceration rather than probation, we vacate only the portion of the sentences ordering the involuntary manslaughter and assault causing bodily injury

sentences to run consecutively. We remand to allow the district court to demonstrate its exercise of discretion in determining whether the sentences should run consecutive or concurrent. See *State v. Ayers*, 590 N.W.2d 25, 33 (Iowa 1999) (finding the district court erred by not exercising its discretion as to a portion of the sentence, and vacating and remanding that portion of the sentence).

SENTENCE VACATED IN PART AND REMANDED.

Sackett, C.J. and Vogel, J. concur. Vaitheswaran, J. dissents.

VAITHESWARAN, J. (Dissenting)

I respectfully dissent. The court provided a detailed statement of reasons for the sentence and prefaced imposition of the sentence, including the imposition of consecutive sentences, with the word “[a]ccordingly.” I would conclude the court sufficiently tied its imposition of consecutive sentences to the overall sentencing plan.