IN THE COURT OF APPEALS OF IOWA

No. 8-426 / 07-1129
Filed July 16, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRIAN DEWAYNE KINCAID,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Thomas N. Bower, Judge.

Defendant appeals from the order sentencing him to a prison term and ordering the term served consecutively to a sentence previously imposed in another matter. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean Pettinger, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant County Attorney, for appellee.

Considered by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

We must decide whether a residential facility run by a judicial district department of correctional services is a "detention facility or penal institution" for purposes of mandatory consecutive sentencing under Iowa Code section 901.8 (2005).

I. Background Facts and Proceedings

Brian Kincaid entered an *Alford*[1] plea to possession of cocaine with intent to deliver. *See* Iowa Code § 214.401(1)(c). The court sentenced him to a prison term and ordered the term served consecutively to a sentence previously imposed in another matter. The court concluded the consecutive sentence was required by statute.

Kincaid appealed. At the outset, he sought a limited remand for a specification of the pertinent statute on which the court relied in imposing the consecutive sentence. The Iowa Supreme Court granted the request.

On remand, the district court summarized the facts triggering its conclusion that consecutive sentences were required. The court noted that, in the previous matter, Kincaid was committed to the First Judicial District residential facility. He was arrested for the current crime while participating in day programming through that facility. The court explained that Iowa Code section 901.8 required "a consecutive sentence if the person committed a crime

[1] An *Alford* plea is a variation of a guilty plea in which a defendant does not admit participation in the acts constituting the crime but consents to the imposition of a sentence. *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167, 27 L. Ed. 2d 162, 171 (1970) (holding Constitution does not bar sentence where accused is unwilling to admit guilt but is willing to waive trial and accept sentence).

while confined in a detention facility or penal institution." The court concluded the residential facility to which Kincaid was committed was a "detention facility or penal institution" under Iowa Code section 901.8 and Kincaid's sentence, therefore, had to "run consecutive" to the sentence in the prior matter. We discern no error in this ruling.

Iowa Code section 901.8, in pertinent part, provides:

> 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. If a person is sentenced for escape under section 719.4 or for a crime committed *while confined in a detention facility or penal institution*, the sentencing judge shall order the sentence to begin at the expiration of any existing sentence.

Iowa Code § 901.8 (emphasis added). The phrase "detention facility or penal institution" is not defined in chapter 901[2] but the Iowa Supreme Court has construed and applied it.

In *State v. Jones*, 298 N.W.2d 296, 298 (Iowa 1980), the court held that a crime committed by an escapee from the Iowa State Penitentiary was a "crime committed while confined in a detention facility or penal institution." The court reasoned as follows:

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[2] The Uniform Act for Rendition of Prisoners as Witnesses in Criminal Proceedings defines "penal institution" broadly as

> a jail, prison, penitentiary, house of correction, or other place of penal detention which is located in a state and includes, but is not limited to, a city or county jail or detention facility, an institution or facility under the control of the department of corrections, the state training school or other facility under the control of the director of the department of human services, and a facility or electronic monitoring program under the control of a judicial district department of correctional services in this state.

> It cannot be conducive to either prison order and discipline or the prevention of crime to provide that inmates who commit crimes while escaped may receive concurrent sentences while inmates who commit crimes within the institution must receive consecutive sentences. We believe the consecutive sentencing provisions of the second sentence of section 901.8 are intended to impose a penalty of increased imprisonment upon offenders who perpetrate crimes while committed to penal institutions or detention facilities. Consecutive sentences may be imposed to deter and punish incorrigible inmates. Since committed inmates are already under sentences of imprisonment, concurrent sentences for crimes committed after an inmate has escaped would have little or no deterrent effect. The same constraints that apply to an inmate within the prison walls who commits a crime should apply to an inmate who escapes and commits a crime.

Jones, 299 N.W.2d at 299 (citations omitted).

Similarly, in *State v. Knipe*, 349 N.W.2d 770, 772 (Iowa 1984), the court held that "a crime committed while on furlough from a state corrections workcamp is a 'crime committed while confined in a detention facility or penal institution.'" The court noted that "the legislature intended the words 'detention facility or penal institution' in Iowa Code section 901.8 to mean and include *at a minimum* the institutions enumerated in Iowa Code section 217A.2 (Supp. 1983) [now Iowa Code section 904.102]." *Knipe*, 349 N.W.2d at 772 (emphasis added). Citing the policies articulated in *Jones*, the court reasoned:

> [A]n escaped inmate and an inmate out on furlough are both equally "committed" to the institution—both are subject to the rules and regulations of the institution. The only difference, which is not distinguishable for purposes of these policy reasons, is that an inmate out on furlough has received the privilege of authorized permission to leave the institution whereas the escaped inmate has not.

Id. at 772.

The First Judicial District residential facility is part of a legislatively mandated "corrections continuum" that begins with "noncommunity-based corrections sanctions," includes "quasi-incarceration sanctions" such as that facility, and ends with incarceration. *See* Iowa Code § 901B.1. The facility is a "community-based correctional program" for those who are "on probation or parole in lieu of or as a result of a sentence of incarceration . . . ." Iowa Code § 905.1(2); *see also* Iowa Admin. Code r. 201-40.1, 201-43.1.

We believe the reasoning of *Jones* and *Knipe* applies with equal force to the First Judicial residential facility. Kincaid was living at the facility when he committed the crime. He was subject to the rules of conduct and disciplinary procedures of the facility. Iowa Admin. Code r. 201-43.1(2). Although he committed the crime while outside the facility, he was obligated by the sentencing order to return to the facility. *Cf. State v. Finchum*, 364 N.W.2d 222, 225 (Iowa 1985) (holding parolee released from commitment did not "fall within the purview" of section 901.8). For these reasons, we conclude the crime Kincaid committed while on day programming through the First Judicial District residential facility was "a crime committed while confined in a detention facility or penal institution." Accordingly, the district court did not err in sentencing Kincaid to consecutive terms under the mandatory sentencing provision of section 901.8.

AFFIRMED.