IN THE COURT OF APPEALS OF IOWA

No. 9-1062 / 09-0975
Filed February 24, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BENNIE JAMES LENOIR,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, Michael G. Dieterich, District Associate Judge.

Bennie Lenoir appeals from the consecutive sentence imposed by the district court on his guilty plea to driving while barred. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Bradley M. Bender, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Jennifer D. Slocum, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

POTTERFIELD, J.

I. Background Facts and Proceedings

On February 3, 2009, the status of Bennie Lenoir's driver's license was barred and he had three pending charges of driving while barred. Nevertheless, Lenoir drove his car that day. He struck a vehicle driven by James Fleming, causing an accident. Lenoir gave Fleming his wallet, asked him not to call the police, and said he was going to get his girlfriend. Lenoir returned to the scene with his girlfriend and, when questioned, told police she had been driving his vehicle. Fleming, however, identified Lenoir as the driver, and Lenoir's girlfriend denied driving the car. Lenoir entered a guilty plea to the charge (AGIN017303).[1] He also pleaded guilty to two of the three pending charges for driving while barred. Pursuant to a plea agreement, the fourth charge was to be dismissed.

Lenoir first received a two-year sentence of incarceration from the Honorable Mark Kruse for one of the three pending charges. On April 21, 2009, he appeared before the Honorable Michael Dieterich for a joint sentencing hearing for the remaining two pending charges. In AGIN017074 the court sentenced Lenoir to an indeterminate term of imprisonment not to exceed two years, to run concurrently with the sentence previously imposed by Judge Kruse.

In this case, AGIN017303, the court imposed a consecutive two-year sentence. Lenoir challenges the sentence imposed, arguing the district court erred by: (1) not affording him an opportunity for allocution; and (2) failing to give specific reasons for imposing a consecutive sentence.

[1] Lenoir appeals only his sentence for the charge of driving while barred in AGIN017303.

II. Standard of Review

We review sentencing challenges for errors at law. Iowa R. App. P. 6.4. Our scope of review on sentencing procedures is for an abuse of discretion. *State v. Craig*, 562 N.W.2d 633, 634 (Iowa 1997).

III. Right to Allocution

Lenoir asserts that he was not afforded an opportunity for allocution as required by the Iowa Rules of Criminal Procedure. Iowa Rule of Criminal Procedure 2.23(3)(*a*) requires the sentencing court to ask whether Lenoir had any legal cause to show why judgment should not be pronounced against him. Rule 2.23(3)(*d*) further provides that prior to the rendering of judgment, "counsel for the defendant, and the defendant personally, shall be allowed to address the court where either wishes to make a statement in mitigation of punishment." Defendant's counsel's statements in mitigation of punishment do not alone satisfy the defendant's right to allocution. *Craig*, 562 N.W.2d at 637. The words used by the sentencing court to offer the defendant the right to allocution do not need to duplicate the language of Rule 2.23. *Id*. at 635. Substantial compliance with the rule is sufficient. *State v. Duckworth*, 597 N.W.2d 799, 800 (Iowa 1999). "Substantial compliance is achieved as long as the district court provides the defendant with an opportunity to volunteer any information helpful to the defendant's cause." *Id.*

Lenoir admits the court afforded him an opportunity to speak prior to the pronouncement of his sentence in AGIN017074. However, he argues that no such right of allocution was afforded in AGIN017303. We agree with the State's contention that the sentencing record in this joint sentencing hearing must be

read as a whole. Though the court began with sentencing in AGIN017074, during consideration of sentencing on that charge, the district court judge asked what the State was recommending for punishment in AGIN017303. The prosecutor responded that one of the two cases before the judge at the sentencing hearing should run consecutively to the sentence previously imposed by Judge Kruse. The prosecutor noted that AGIN017303 had unique facts that were aggravating factors. Defense counsel was then given an opportunity to speak, stating "to run them consecutively at this stage . . . I just think it's too much." Soon thereafter, the judge asked Lenoir, "Is there anything you want to say about sentencing?" Lenoir responded, "No."

The sentencing hearing was not split into two distinct parts, but was treated as one hearing for both charges. This is evidenced by the judge's statement after pronouncing sentencing in AGIN017074 that he did not need to hear "any more" from counsel on AGIN017303. Both counsel and Lenoir had already discussed both charges and the sentencing recommendations. The court had been discussing both charges when it addressed Lenoir and gave him the opportunity to speak about sentencing. The context of the question indicates that it was Lenoir's opportunity to make a statement in mitigation on either charge. We find, given the overlap in the discussion on the two charges during the sentencing hearing, the court substantially complied with Rule 2.23.

IV. Reasoning for Sentence

Lenoir also argues the district court failed to give sufficient reasons for its decision to impose a consecutive sentence. Rule 2.23(3)(*d*) provides, "The court shall state on the record its reason for selecting the particular sentence." The

district court must give its reasons for imposing consecutive, rather than concurrent, sentences. *State v. Keopasaeuth*, 645 N.W.2d 637, 641 (Iowa 2002). "Although the reasons do not need to be detailed, they must be sufficient to allow appellate review of the discretionary action." *State v. Evans*, 671 N.W.2d 720, 727 (Iowa 2003). A statement may be sufficient, even if terse and succinct, so long as the brevity of the court's statement does not prevent review of the exercise of the trial court's sentencing discretion. *See, e.g.*, *State v. Victo*r, 310 N.W.2d 201, 205 (Iowa 1981).

After sentencing Lenoir in AGIN017074, the district court stated, "The reasons for my sentence, hopefully to rehabilitate you and protect the public." Further, in pronouncing sentencing in AGIN017303, the district court stated "the facts of this one are more egregious." The record as a whole reflects the court's reasoning in imposing concurrent and consecutive sentences as part of an overall sentencing plan for Lenoir. *See State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989) (finding the record as a whole showed the district court's reason for choosing consecutive sentences was part of an overall sentencing plan). Because we find the district court's reasons were sufficient, we affirm.

AFFIRMED.