

IN THE COURT OF APPEALS OF IOWA

No. 9-590 / 08-1664
Filed September 2, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RONNIE O'NEAL SHIVERS,
Defendant-Appellant.

Appeal from the Iowa District Court for Webster County, Kurt L. Wilke,
Judge.

Defendant appeals his sentences for the crimes of possession of
marijuana (enhanced) and failure to affix a drug tax stamp. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis Hendrickson,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney
General, Timothy Schott, County Attorney, and Jennifer Bronzer, Assistant
County Attorney, for appellee.

Considered by Vaitheswaran, P.J., Mansfield, J., and Zimmer, S.J.*

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

ZIMMER, S.J.

Ronnie Shivers appeals from the judgment and sentence entered following a jury verdict finding him guilty of possession of marijuana, third offense, in violation of Iowa Code sections 124.401(1)(d) and 124.411 (2007), and failure to affix a drug tax stamp, in violation of sections 453B.3 and 453B.12. He contends the district court failed to give adequate reasons for imposing consecutive sentences. We affirm.

At the time the present offenses were committed on May 18, 2007, Shivers was on already on probation for drug-related offenses he committed in 2006.¹ While the present case was pending, Shivers's probation was revoked, and he was committed to prison for a term not to exceed twelve years. Shivers was in prison serving that sentence when the sentencing hearing in the present case was held.

At the sentencing hearing on September 19, 2008, the State asked that concurrent five-year sentences be imposed on the present charges, but urged the sentencing court to run Shivers's sentences consecutive to the twelve-year sentence he was already serving. The State cited Shivers's extensive criminal history and the fact that the new charges were committed while he was on probation. Shivers argued that since he was already serving a twelve-year sentence, his sentences in this case should run concurrently with that sentence. He argued that adding additional time to the twelve-year sentence would not aid in his rehabilitation.

¹ Shivers was convicted of possession of marijuana with intent to deliver, failure to affix a drug tax stamp, and impersonating a public official in 2006 and placed on probation. His probation was revoked in December 2007.

After considering the arguments of counsel, the court ordered Shivers to serve a term of imprisonment not to exceed five years on each charge, to be served concurrently. The court further ordered these sentences were to be served consecutively to any sentences previously imposed.

The district court did not give any reasons for its sentence during the sentencing hearing. However, the written sentencing order filed immediately after Shivers was sentenced stated, “Due to the Defendant’s lengthy criminal record and his current incarceration on other charges, this Court concludes that judgment should be imposed as hereinafter provided.” The written order then provided that Shivers’s two five-year sentences would be served concurrently to each other but consecutive to his earlier twelve-year sentence. Shivers appeals from the sentences imposed by the court.

Our review of the district court’s sentencing decision is for an abuse of discretion. *State v. Laffey*, 600 N.W.2d 57, 62 (Iowa 1999). Under Iowa Rule of Criminal Procedure 2.23(3)(d), “[t]he court shall state on the record its reason for selecting the particular sentence.” The district court must also give its reasons for imposing consecutive, rather than concurrent, sentences. *State v. Keopasa euth*, 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) (citation omitted).

Upon careful review of the record, we disagree with Shivers’s contention that the district court failed to give reasons for running the sentences on the current charges consecutive to the twelve-year sentence on the prior charge.

Shivers has an extensive criminal record which dates back to 1991. At the sentencing hearing, the State and Shivers agreed on all but one detail regarding Shivers's sentence. Shivers's attorney acknowledged that "[s]treet probation doesn't seem viable" and agreed with the State's recommendation to run the two five-year terms for his client's present convictions concurrently.

The record reveals the only difference between the recommendations from counsel for the State and Shiver's counsel was whether Shivers's two five-year terms would be served concurrently with or consecutively to his prior twelve-year sentence. The court's statement of reasons in its written sentencing order, though admittedly terse, indicates the court knew it had discretion to run Shivers's sentences concurrently with his prior offenses, but rejected that result because of Shivers's lengthy criminal history and the fact that his current offenses were committed while he was already on probation for previous drug-related offenses. Accordingly, we affirm the court's sentencing order.

AFFIRMED.