IN THE COURT OF APPEALS OF IOWA

No. 3-015 / 92-147

451

STATE OF IOWA,

Appellee,

vs.

HOMER JAY McCALL, JR.,

Appellant.

FILED
MAR 3 0 1993
CLERK SUPREME COURT

Appeal from the Iowa District Court for Cedar County, Max Werling, Judge.

The defendant appeals the district court's judgment sentencing him to two years on one count of carrying a concealed weapon in violation of Iowa Code section 724.4 (1991), five years for second-degree theft in violation of Iowa Code sections 714.1 and 714.2(2) (1991), and ten years each on two counts of second-degree burglary in violation of Iowa Code sections 713.1 and 713.5 (1991). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Elizabeth E. Quinlan, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Richard Bennett, Assistant Attorney General, and Lee W. Beine, County Attorney, for appellee.

Considered by Oxberger, C.J. and Donielson and Schlegel, JJ.

SCHLEGEL, J.

The defendant, Homer Jay McCall, Jr., appeals the district court's judgment sentencing him to two years on one count of carrying a concealed weapon in violation of Iowa Code section 724.4 (1991), to five years for second-degree theft in violation of Iowa Code sections 714.1 and 714.2(2) (1991), and to ten years each on two counts of second-degree burglary in violation of Iowa Code sections 713.1 and 713.5 (1991). McCall contends the sentencing court erred when it did not permit him the opportunity to withdraw his guilty plea after the court had specifically stated it would permit him to do so if the court did not comply with the plea agreement.

McCall was charged by trial information with one count of carrying a concealed weapon, two counts of second-degree theft, one count of third-degree theft, three counts of second-degree burglary, and one count of possession of a firearm. On December 16, 1991, pursuant to a written plea agreement, McCall pleaded guilty to one count of carrying a concealed weapon, one count of second-degree theft, and two counts of second-degree burglary (hereafter referred to as the Cedar County crimes). The district court stated that if for some reason it could not accept McCall's plea after examining the presentence investigation report, the court would give McCall an opportunity to withdraw his plea.

After examining the presentence investigation report, the district court sentenced McCall to serve two years for one count of carrying a concealed weapon, five years for second-degree theft, and ten years on each count of second-degree burglary. In accordance with the plea agreement, these sentences were to be served concurrently, and the remaining charges were dismissed. In addition, the district court sentenced McCall to a ten-year term of imprisonment, such time to be served consecutively to the Cedar County concurrent sentences. The court issued this sentence after noting from the presentence investigation report that McCall's probation officer recommended revocation of the defendant's prior probation sentence resulting from a conviction of a felony committed in Scott County, Iowa while the defendant was on parole. The court revoked McCall's probation pursuant to Iowa Code section 908.10 (1991), and McCall's trial counsel objected on the ground that McCall had no notice that his parole was going to be revoked. The district court explained its decision by stating it gave McCall the consecutive sentence as a result of the number of home burglaries he had committed.

McCall appeals, arguing the court was required to afford him an opportunity to withdraw his guilty plea in accordance with Iowa Rule of Criminal Procedure 9(4) (1991) when the court allegedly rejected the terms of the plea agreement. McCall points out that the court, prior to

sentencing, stated it would likely accept the terms of the plea agreement absent any surprises in the presentence investigation report.

We review for an abuse of discretion. In order to show an abuse of discretion, one generally must show that the court exercised its discretion "'on grounds or for reasons clearly untenable or to an extent clearly unreasonable. State v. Blackwell, 238 N.W.2d 131, 138 (Iowa 1976) (quoting State v. Burnor, 326 A.2d 138, 140 (Vt. 1974)).

In essence, McCall argues that ordering the Scott County sentence to be served consecutively to the Cedar County concurrent crimes violated the plea agreement. McCall contends this sentencing decision constituted a rejection of the plea agreement by the court, requiring defendant to be given an opportunity to withdraw the Cedar County guilty pleas in accordance with Iowa Rule of Criminal Procedure 9(4). We find this contention to be without merit.

We conclude the district court did not reject the plea agreement and find the sentences imposed for the Cedar County crimes to be entirely consistent with the plea agreement. The agreement did not address, nor purport to control, any sentence to be imposed for revocation of probation for an offense completely independent of the Cedar County crimes. The agreement did not dictate that such a sentence would have to be imposed concurrently. The

consecutive sentencing imposed by the court was within the court's broad discretion in view of the defendant's record of convictions for prior serious offenses and earlier failed attempts at rehabilitation. See State v. Powell 400 N.W.2d 562, 566 (Iowa 1987); State v. Fink, 320 N.W.2d 632, 633-34 (Iowa App. 1982).

Accordingly, because the district court properly imposed sentencing in accordance with the plea agreement, we find no abuse of discretion.

AFFIRMED.