

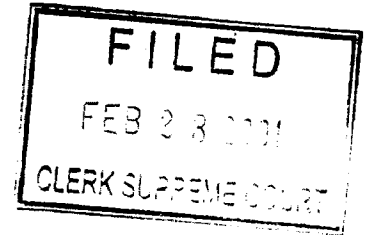
IN THE COURT OF APPEALS OF IOWA

No. 0-834 / 00-0853
Filed February 28, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MATTHEW SHAWN McMILLAN,
Defendant-Appellant.



Appeal from the Iowa District Court for Allamakee County, James L. Beeghly, Judge.

Matthew Shawn McMillan appeals the district court's judgment and sentence, entered following his convictions, after he pled guilty to two counts of assault on a peace officer while displaying a dangerous weapon in violation of Iowa Code section 708.3A(2) (1999), and two counts of interference with official acts while displaying a dangerous weapon in violation of Iowa Code section 719.1. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, and William Shafer, County Attorney, for appellee.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

000600

MAHAN, J.

Matthew Shawn McMillan appeals the district court's judgment and sentence, entered following his convictions, after he pled guilty to two counts of assault on a peace officer while displaying a dangerous weapon in violation of Iowa Code section 708.3A(2) (1999), and two counts of interference with official acts while displaying a dangerous weapon in violation of Iowa Code section 719.1. He contends the district court abused its discretion when it sentenced him to twenty years imprisonment. We affirm.

Background Facts and Proceedings. Four separate trial informations charged McMillan with two counts of assault on a peace officer while displaying a dangerous weapon, two counts of interference with official acts while displaying a dangerous weapon, and two counts of being a habitual offender. The charges stemmed from two separate instances during which McMillan allegedly confronted police officers and threatened them with weapons.

During one incident, McMillan forced officers attempting to pick him up on an outstanding warrant to remain in their squad car when he approached them swinging a baseball bat. The officers ended up leaving the scene without exiting the squad car, deciding "to let him go versus, in essence, potentially shooting him."

A few days later, officers again attempted to serve the arrest warrant on McMillan. The officers took additional precautions. This time, McMillan came to the door of the trailer in which he was living with a machete in his hand. One officer drew his weapon. After an hour and a half of negotiations failed, six

officers “ambushed” McMillan. As many as fifteen officers, including Iowa State Troopers and SWAT team members, were summoned to apprehend McMillan.

Pursuant to a negotiated plea, McMillan pleaded guilty to the four substantive class “D” felonies and the State dismissed the two habitual offender charges. After a hearing on the matter, the district court sentenced McMillan to four consecutive five-year terms of imprisonment. McMillan appeals.

Standard of Review. We will disturb a sentence only upon a showing the trial court abused its discretion. *State v. Garrow*, 480 N.W.2d 256, 259 (Iowa 1992). Sentencing decisions of the trial court are cloaked with a strong presumption in their favor, and an abuse of discretion will not be found unless the defendant shows such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995).

Sentence Imposed. In determining the proper sentence, the district court should weigh and consider all pertinent matters, including the nature of the offense, the attending circumstances, defendant’s age, character and propensities and chances of his reform. *State v. August*, 589 N.W.2d 740, 744 (Iowa 1999) (quoting *State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979)). The courts owe a duty to the public as much as to defendant in determining a proper sentence. *Id.* The punishment should fit both the crime and the individual. *Id.*

McMillan contends the district court failed to give adequate consideration to his character and chances of reform when it sentenced him to twenty years

imprisonment. Specifically, McMillan points to his mental health problems, which were affected by his drug addiction, and his motivation to enter and complete a drug addiction treatment program. We find McMillan's contentions without merit.

At the sentencing hearing, officers explained in detail the circumstances surrounding the charges brought against McMillan. In addition, one officer testified he had encountered McMillan many times, beginning when McMillan was five or six years old. He considered McMillan to be "very violent." Another officer testified he considered McMillan "very dangerous, probably one of the most dangerous that we have to encounter on the streets. If we run up against Mr. McMillan, we try to have a minimum of two officers, just for officer safety."

Dr. Taylor, a psychiatrist, interviewed McMillan prior to the sentencing hearing. At the hearing, Dr. Taylor testified McMillan "does not seem to have learned" from numerous opportunities at treatment for his methamphetamine and alcohol addictions. He told the court, "I'm as certain as I can be . . . that Mr. McMillan would begin using methamphetamine again at the first opportunity, and very clearly when he's using methamphetamine he is a significant danger to the health of others." Dr. Taylor recommended McMillan "remain incarcerated as long as possible under the law."

McMillan's grandmother admitted she left her home out of fear after McMillan hit her in the face and pulled her hair. The incident resulted in the filing of an assault charge. She explained to the court the methamphetamine made McMillan hallucinate or become paranoid. According to his grandmother, with

whom he lived, McMillan only received "a few days" of drug treatment, and never received treatment for his alcohol use.

The court explained its reasons for imposing the twenty-year sentence:

This sentence is the . . . most severe that it could be under the present pleas that were entered by the defendant, and the reasons for that, I have taken into account all of the background and personal information regarding Mr. McMillan that are set out in the presentence investigation reports. I have read all the exhibits that he has submitted to the Court, . . . and all of the testimonies on his behalf that have been submitted by friends and family.

I have considered all their recommendations. I have considered the recommendation of the county attorney, and though there wasn't a recommendation as to consecutive or concurrent in the presentence investigation report, they did recommend incarceration, and I considered that. The Court has considered all of these background information and has considered its alternatives in sentencing and making this judgment and sentence.

Other reasons for this sentence are the failure so far of Mr. McMillan to take personal responsibility for his own actions and personal responsibility for his recovery from addiction to at least three drugs: alcohol, methamphetamine, and marijuana. I do believe that he's sincere in his intent at this time to abstain from using these kind of drugs. I don't think he has received a sufficient amount of treatment. I'm going to recommend in my order that he receive substance abuse treatment, and I'm going to recommend that he receive treatment for anger management and counseling as well.

I believe in this case the result could have been a lot more severe had the police officers on July 16th and July 19th, 1999, not exercised self-restraint and good judgment in withdrawing from confrontation with Mr. McMillan when he was delusional and psychotic and impaired substantially by primarily methamphetamine abuse. I think on either of those days there could have been major injuries to Mr. McMillan or police officers or both, and there might even have been a death involved. I think the police officers handled the situation appropriately and in good judgment and saved the kind of catastrophic result that would have resulted if they had pressed forward and decided to use deadly force in taking Mr. McMillan into custody.

I considered that there are elements here that are a little unusual...because Mr. McMillan...has the degree of impairment...that made him . . . less responsible probably because of the psychosis and delusional thoughts . . . but they don't erase

the fact that he's had opportunities for treatment before, hasn't taken them seriously enough to follow through and commit himself to a drug and alcohol abstinent life-style that I think is going to be necessary for him to stay out of trouble in the long run.

And considering all of these factors, I believe that this is the most appropriate sentence that the court could impose under these circumstances.

As demonstrated by its detailed explanation, the court carefully considered many factors before imposing the twenty-year sentence. Contrary to McMillan's assertions, the record demonstrates he has not "completely turned his life around," and remains a threat to society. McMillan has an extensive history of crime, violence and substance abuse. In light of the recommendations made to the court and McMillan's repeated failures to learn from his prior experiences, we conclude the court did not abuse its discretion in imposing four consecutive five-year terms of incarceration.

AFFIRMED.