IN THE COURT OF APPEALS OF IOWA

No. 1-354 / 00-1154
Filed July 31, 2001

FILED
JUL 31 2001
CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DAVID WAYNE SIMMONS,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, David Good, Judge.

David Simmons appeals the sentences imposed upon his convictions for two counts of sexual abuse in the third-degree in violation of Iowa Code section 709.4(2)(c)(4) (1999). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John P. Messina, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Denver D. Dillard, County Attorney, and Jerry Vandersanden, Assistant County Attorney, for appellee.

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

000307

MILLER, J.

David Simmons appeals the sentences imposed upon his convictions for two counts of sexual abuse in the third degree in violation of Iowa Code section 709.4(2)(c)(4) (1999). He contends the trial court erred in failing to state reasons for imposing consecutive sentences. We affirm.

I. BACKGROUND FACTS

Simmons was a coach and teacher at Jefferson High School in Cedar Rapids. He was charged in December 1999 with two counts of third degree sexual abuse in violation of Iowa Code section 709.4(2)(c)(4). The State alleged that during 1998 and 1999 Simmons engaged in consensual sex acts with two freshman girls whom he taught at Jefferson High School at the time. Simmons denied having sexual relations with one of the girls and admitted a sexual relationship with the other, but alleged she was sixteen when the acts took place. The case proceeded to trial and the jury found Simmons guilty on both counts.

At Simmons' lengthy sentencing hearing the State recommended prison and consecutive sentences while Simmons asked for suspended sentences and probation. At the sentencing proceeding two people testified for the State and four for Simmons. The trial court sentenced Simmons to two indeterminate ten-year terms of incarceration and ordered that the sentences run consecutively.

After stating that the two sentences were to run consecutively the trial court orally gave the following reasons for the sentences at the hearing:

> My reasons for the sentences are the facts and circumstances set out in the presentence investigation and the response to the presentence investigation report which has been or will be attached to the presentence investigation; the testimony of the individuals who came into court this morning; and the letters and information that was supplied to the Court by way of the presentence

> investigation and the response to the presentence investigation; the Defendant's age; the nature of the offense; the Defendant's prior criminal record. The Court also took into account the fact that the Defendant does have family obligations and in addition to any other victims, his own child and his own family certainly were victimized by this as well. That's the reason for the minimum fine so that the financial obligations to the family -- the Defendant's family may be taken into account.
>
> The Court further believes that the sentences imposed will offer the Defendant the maximum opportunity for rehabilitation as well as protection for the community.

The district court's written judgment and sentencing order listed some of the same reasons in a somewhat more abbreviated and summary form. It added as reasons "the recommendation of the State" and "the recommendation of the presentence investigator."

Simmons appeals from the sentences alleging the trial court's statement of reasons for the sentences went more to the need for incarceration and therefore was insufficient to discern the basis for the imposition of consecutive sentences.

II. STANDARD OF REVIEW

Our review of sentencing decisions is for the correction of errors at law. Iowa R. App. P. 4; *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). We review for an abuse of discretion or for defects in the sentencing procedure. *State v. Cason*, 532 N.W.2d 755, 756 (Iowa 1995). A sentence will not be upset on appeal unless the defendant demonstrates an abuse of trial court discretion or a defect in the sentencing procedure, such as a consideration of impermissible factors. *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000); *State v. Wright*, 340 N.W.2d 590, 592 (Iowa 1983).

III. MERITS

Iowa Rule of Criminal Procedure 22(3)(d) requires a sentencing court to "state on the record its reason for selecting the particular sentence." The court must also give reasons for its decision to impose consecutive sentences. *State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000); *State v. Oliver*, 588 N.W.2d 412, 414-15 (Iowa 1998); *State v. Harrington*, 349 N.W.2d 758, 763 (Iowa 1984). Although the reasons need not be detailed, they must be sufficient to allow appellate review of the court's discretionary act of ordering consecutive sentences. *See Jacobs*, 607 N.W.2d at 690. Failure to state on the record the reasons for the sentence imposed requires that the sentence be vacated and the case remanded for amplification of the record and resentencing. *State v. Marti*, 290 N.W.2d 570, 589 (Iowa 1980); *State v. Freeman*, 404 N.W.2d 188, 191 (Iowa Ct. App. 1987).

Simmons argues the district court failed to give reasons for imposing consecutive sentences. He asserts the court's statement gives reasons for rejecting probation in favor of incarceration, but is insufficient to discern its reasons for consecutive sentences.

Most all of the reasons given by the trial court refer to documents, testimony, recommendations, and other information without identifying particular facts, specific to this case, upon which it relied in deciding that the sentences it imposed would be served consecutively. Trial court identification of case-specific facts and reasons for sentencing decisions will in most cases avoid claims on appeal that the statement of reasons is inadequate, and in cases in which such claims are raised will greatly facilitate appellate review. We nevertheless believe that from a review of items to which the trial court referred we are able to discern

its reasons for consecutive sentences and are thus able to review its exercise of sentencing discretion in this case.

The "nature of the offense[s]" and the "facts and circumstances" set out in the presentence investigation report are that the defendant, a high school teacher, had a sexual relationship with each of two minor victims who were his students; the two relationships occurred at different times; and the relationships extended over about a one and one-half year period. The "testimony of the individuals who came into court [for the sentencing hearing]" included the testimony of one victim and the testimony of the other victim's mother. Their testimony recounted how the defendant's actions had destroyed the trust of the victims and their families and caused the victims emotional, academic and social harm. The "defendant's age" was thirty-two years. He was not a youthful offender. The "recommendation of the State" was incarceration for consecutive terms. The "recommendation of the presentence investigator" was incarceration for consecutive terms.

We conclude the trial court's statements on the record at the time of the sentencing hearing, together with the additional reasons stated in its written sentencing order, explain its overall sentencing plan, including its decision to impose consecutive sentences. They are therefore sufficient to allow appellate review of the trial court's discretionary act of ordering consecutive sentences, and are thus an adequate statement of reasons for ordering defendant's sentences to be served consecutively. *See State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989) (holding that where the statement of reasons is sufficient to determine that the district court ordered consecutive sentences as part of an

overall sentencing plan the record is sufficient to review the exercise of the trial court's sentencing discretion). We therefore affirm the sentences imposed by the district court.

AFFIRMED.