IN THE COURT OF APPEALS OF IOWA

No. 7-121 / 95-1987

STATE OF IOWA,
Plaintiff-Appellee,

vs.

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STEVEN LEE LAMPE,
Defendant-Appellant.

Appeal from the Iowa District Court for Marshall County, Carl E. Peterson (postconviction & resentencing) and Timothy J. Finn (sentencing), Judges.

Defendant appeals from his resentencing for forgery, in violation of Iowa Code section 715A.2(1) and 715A.2(2)(a) (1993), and being an habitual offender under Iowa Code section 902.8. **AFFIRMED.**

Jeffrey L. L. Stein of the Stein Law Office, Marshalltown, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, James J. DeTaeye, County Attorney, and Paul G. Crawford, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Huitink and Streit, JJ.

HUITINK, J.

I. Background Facts and Proceedings.

In December 1993, Lampe was charged with four counts of forgery and being a habitual offender. In March 1994, Lampe pled guilty to one count of forgery and to being a habitual offender. The district court sentenced Lampe to a term of incarceration not to exceed five years on the forgery count and a term of three years for being a habitual offender. He was given credit for time served since June 29, 1993, including time served in a Missouri jail.

In April 1994, the State filed a motion to amend the sentence because Lampe was not sentenced to an indeterminate fifteen-year term as provided by Iowa Code section 902.9(2). In May 1994, Lampe's sentence was corrected by imposing the requested indeterminate fifteen-year term. The district court also granted the Department of Corrections' request for a nunc pro tunc order denying Lampe's credit for time served in Missouri prior to November 22, 1993, the date he waived extradiction to Iowa.

In May 1995, Lampe filed an application for postconviction relief. After an evidentiary hearing, the district court found Lampe's sentence was illegally imposed and it was vacated. The district court also vacated the nunc pro tunc order eliminating a portion of Lampe's credit for time served.

In October 1995, the district court re-sentenced Lampe to a term not to exceed fifteen years. The court's sentencing order also provided Lampe shall not be eligible for parole until he serves a minimum sentence of three years. Lampe's credit for time served prior to sentencing was limited to time served after November 22, 1993.

On appeal Lampe argues the sentence imposed was unduly severe and the district court abused its sentencing discretion by denying his request for a suspended sentence. He also argues he is entitled to credit for time served from June 29, 1993, instead of November 22, 1993.

II. Sentence.

The imposition of a sentence is generally within the discretion of the trial court and will be disturbed only upon a showing of an abuse of discretion. *State v. Garrow*, 480 N.W.2d 256, 259 (Iowa 1992). An abuse of discretion will be found only when the discretion is exercised on grounds which are clearly untenable or to an extent clearly unreasonable. *State v. Johnson*, 476 N.W.2d 330, 335 (Iowa 1991).

Lampe submits the district court abused its discretion when it refused to grant him a suspended sentence with probation rather than a prison term. Lampe cites to the two years he has already served, his prison record, and his family obligations as reasons supporting a suspended sentence.

The presentence investigation detailing Lampe's extensive juvenile and adult criminal records was made available to the district court at the resentencing hearing.

In addition, the court was aware Lampe had been sentenced as a habitual offender in the past. In light of these circumstances, the court concluded that a period of confinement was appropriate. We agree and find no abuse of discretion in the sentence imposed by the district court.

III. Credit for Time Served.

Iowa Code section 903A.5 provides:

> . . . if an inmate was confined to a county jail or other correctional or mental facility at any time prior to sentencing, or after sentencing but prior to the case having been decided on appeal, because of failure to furnish bail or because of being charged with a nonbailable offense, the inmate shall be given credit for time served upon the term of the sentence.
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> . . .
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> An inmate shall not receive credit upon the inmate's sentence for time spent in custody in another state resisting return to Iowa following an escape, or for time served in an institution or jail of another jurisdiction during any period of time the person is receiving credit upon a sentence of that other jurisdiction.

In *State v. Trammel*, 458 N.W.2d 862 (Iowa App. 1990), we observed that the court "was merely following the mandate of 903A.5" when it ordered an Iowa sentence to run consecutive to an existing Texas sentence. *Id.* at 864. The Supreme Court has also interpreted section 903A.5 to deny inmates credit for time served in another jurisdiction when the inmate is receiving credit upon a sentence of the other jurisdiction. *State v. Iowa District Court for Mitchell County*, 471 N.W.2d 802, 803

(Iowa 1991).[1] The court held in *Iowa District Court for Mitchell County* that pursuant to section 903A.5, the district court lacked the authority to order an Iowa sentence to be served concurrently with an existing sentence in another jurisdiction. *Id.*

The gist of Lampe's argument is that he was available for immediate release upon Missouri's receipt of an Iowa governor's warrant on June 28, 1993. He cites a June 29, 1993, letter from a Missouri corrections officer indicating Iowa's "detainer" request would be honored and Lampe's temporary custody would be transferred to Iowa upon receipt of the necessary documentation. Thus, Lampe argues he was no longer receiving credit against a Missouri sentence and the foregoing rules do not apply.

A careful reading of the June 29, 1993, letter does not support Lampe's contention. The letter clearly states Lampe was serving time for a Missouri conviction on the date the governor's warrant was received. There is no indication his term was completed or that he had waived extradition to Iowa. Accordingly, Lampe was properly denied credit for time served from June 29, 1993, because he was serving a sentence in Missouri and received credit for time served against his

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[1] *See also Bagley v. Rogerson,* 5 F.3d 325, 328 (8th Cir. 1993), where the Eighth Circuit Court of Appeals held that under Iowa Code section 903A.5, credit against an Iowa sentence is not given for service in another jurisdiction if the prisoner is receiving credit for that service against a sentence of that other jurisdiction.

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Missouri conviction. The district court correctly credited Lampe for time served from November 22, 1993, the date he waived extradition to Iowa.

We have considered all of Lampe's arguments and find them to be without merit. The judgment of the district court is affirmed.

AFFIRMED.