

IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

ROBERT M. OLMSTEAD,)

Petitioner-Appellant,)

Filed September 27, 1983

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vs.)

STATE OF IOWA,)

Respondent-Appellee.)

3-197
2-69330

Appeal from Scott District Court - Nathan Grant, Judge.

Petitioner appeals the district court's denial of postconviction relief.

AFFIRMED.

Nancy Baumgartner of Lawrence & Baumgartner, Iowa City, Iowa, for
petitioner-appellant.

Thomas J. Miller, Attorney General of Iowa, and Lona Hansen, Assistant
Attorney General, for the respondent-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlege, Hayden and
Sackett, JJ.

HAYDEN, J.

Petitioner appeals the district court's denial of postconviction relief. We affirm.

While an escapee from a Michigan prison, petitioner was arrested in Iowa and pled guilty to a charge of second degree robbery. He was sentenced to a term of up to ten years. The sentencing court did not specify whether the sentence would run concurrently or consecutively to any pre-existing sentence. Petitioner completed his Michigan sentence and was transported to Fort Madison. He filed this petition for postconviction relief when he learned that he would receive no credit on his Iowa sentence for the time served in Michigan after his Iowa conviction.

Petitioner asserts that Iowa Code § 901.8 (1979) has been interpreted to require concurrent sentences for persons already serving time in Iowa unless specifically noted otherwise by the sentencing court. He contends that the same rule must be applied in this case where the prior sentence was imposed by another state in order to provide him with equal protection of the laws.

Our review of an action for postconviction relief is ordinarily on assigned error. However, where, as here, a violation of constitutional rights is asserted, we make our own evaluation of the totality of the circumstances. This is the equivalent of a de novo review. Hinkle v. State, 290 N.W.2d 28, 30 (Iowa 1980).

Petitioner's assertion that usually a sentence is served concurrently with another Iowa sentence unless the court specifically directs otherwise is correct. Cleesen v. Brewer, 201 N.W.2d 474, 477 (Iowa 1972). It is also the case, as petitioner notes, that the supreme court has held that where the prior sentence is imposed by a sister state, a later Iowa sentence is served consecutively to the prior sentence. Herman v. Brewer, 193 N.W.2d 540, 543-44 (Iowa 1972).

However, both of these cases specifically note that these presumptions only apply in the absence of a statute. Cleesen v. Brewer, 201 N.W.2d at 477; Herman

v. Brewer, 193 N.W.2d at 544. In petitioner's case there is a statute which supersedes the rules stated above. Iowa Code § 901.8 (1979) provides in part: "If a person is sentenced for escape under section 719.4 or for a crime committed while confined in a detention facility or penal institution, the sentencing judge shall order the sentence to begin at the expiration of any existing sentence." (emphasis added). The supreme court has determined that an escapee from a prison is still "confined" within the meaning of this statute. State v. Jones, 298 N.W.2d 296, 298-99 (Iowa 1980). Since petitioner was convicted of burglary while an escapee from prison, this part of the statute applies to him.

Therefore, the imposition of a consecutive sentence was mandatory in petitioner's case just as it is in such cases where both sentences are imposed in Iowa. There is no equal protection issue presented. The lower court's dismissal of the petition is affirmed.

AFFIRMED.