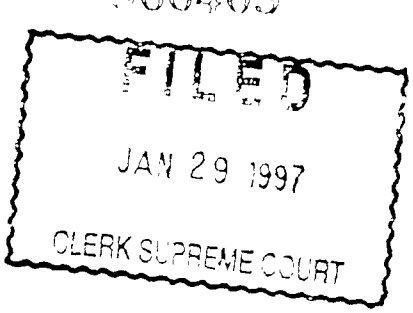
IN THE COURT OF APPEALS OF IOWA

No. 6-799 / 96-690



STATE OF IOWA,

Plaintiff-Appellee,

vs.

TULANI GILLUM,

Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, K.D. Briner, Judge.

Defendant appeals from the consecutive sentences imposed on his convictions for possession with the intent to deliver a controlled substance in violation of Iowa Code sections 124.401(1)(b) (1993) and 124.401(1)(b) (1995). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Kevin Cmelik, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Susan M. Crawford, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kim Griffith, Assistant County Attorney, for appellee.

Considered by Habhab, C.J., Huitink, and Vogel, JJ.

PER CURIAM

Defendant, Tulani Gillum, appeals from the imposition of consecutive sentences. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Gillum pleaded guilty to two counts of possession of more than five grams of cocaine base with intent to deliver (class B felonies), two counts of failure to affix a tax stamp, one count of driving while license suspended, one count of driving while barred, and one count of interference with official acts. The district court imposed consecutive terms of imprisonment not to exceed twenty-five years on the two counts of possession with intent (class B felonies) and waived the mandatory minimum one-third sentence for one conviction. Gillum now appeals from the imposition of consecutive sentences, contending the district court abused its discretion by considering unprosecuted offenses and in relying on a single factor—the quantity of drug.

We pass on the State's argument that Gillum failed to adequately preserve the issue for review because the record belies Gillum's assertions. The court did consider the two year difference between the two drug offenses. The court noted that defendant was either unlucky or involved in on-going criminal activity. Contrary to Gillum's characterization of the court's observation, however, we do not believe the court thereby relied upon unprosecuted offenses. The court merely considered the span of time the defendant had admittedly been involved in criminal activity.

Moreover, our review of the record convinces us that the sentencing court did not rely solely on the amount of drug involved. In imposing consecutive sentences the district court noted not only the amount of drug, but also, the seriousness of the offenses and their effect on the community, and that the two offenses occurred two years apart. The court also considered the defendant's age, intelligence, and possibility for rehabilitation.

We reject defendant's contentions that the court relied upon unprosecuted offenses or impermissibly considered a single factor. We affirm the sentences imposed.

AFFIRMED.