

IN THE COURT OF APPEALS OF IOWA

FILED

JAN 26 1989

CLERK SUPREME COURT

RANDY EUGENE BALL,)

Applicant-Appellant,)

vs.)

STATE OF IOWA,)

Resister-Appellee.)

8-613
88-25

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Appeal from the Iowa District Court for Black Hawk
County (No. 69102), Peter Van Metre, Judge.

Defendant appeals the summary dismissal of his fourth
application for postconviction relief after a jury
convicted him of participating in a gang rape. **AFFIRMED.**

Stephen J. Rapp, Waterloo, for applicant-appellant.

Thomas J. Miller, Attorney General; Bruce Kempkes,
Assistant Attorney General; and Scott Lemke, Assistant
County Attorney, for resister-appellee.

Considered by Schlegel, P.J., and Sackett and Habhab,
JJ.

PER CURIAM

Applicant-appellant Randall Eugene Ball appeals the trial court's order granting the State a summary judgment on his postconviction relief petition. A jury had convicted him of participating in the gang rape of a young woman in February 1977, see Iowa Code § 698.1 (1975). The sentencing court imprisoned him for life. Ball challenges his life sentence on two grounds. First, he claims federal due process required the sentencing court to state on the record its reason for imprisoning him for life and he should be entitled to present evidence on the issue of abuse of discretion by the trial court in setting a determinate sentence; second, he claims life imprisonment in his case violated the federal constitutional guarantee against cruel and unusual punishment. He contends these claims should be considered because previous counsel rendered ineffective assistance for failing to raise them earlier.

Ball contends federal due process required the sentencing court in 1977 to state its reasons on the record for imprisoning him for life. In State v. Welsh, 245 N.W.2d 290, 297 (1970), just prior to his trial, the Iowa court determined the United States Supreme Court will not, as a due process requirement under the federal constitution, impose on sentencing judges the obligation to give reasons for their decisions. See also State v.

Smith, 244 N.W.2d 325, 326 (Iowa 1976). We note Iowa Rule of Criminal Procedure 22(3)(d) now requires a court to "state on the record its reason for selecting [a] particular sentence." The rule was not in place when defendant was sentenced.

Defendant next argues his sentence amounted to cruel and unusual punishment in violation of the federal constitution. He claims a life sentence was disproportionate to the crime for which he was charged.

Ball argues Salena v. Helm, 463 U.S. 277, 288, 103 S.Ct. 3001, 3008-09, 77 L.Ed. 637, 647-48 (1983) created a new standard for reviewing sentences. We have rejected that argument. See Cuevas v. State, 372 N.W.2d 284, 286 (Iowa App. 1985).

The trial court is affirmed.

AFFIRMED.