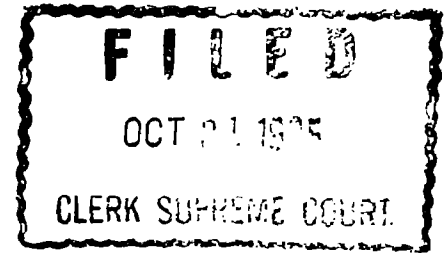


IN THE COURT OF APPEALS OF IOWA

No. 5-433 / 94-1346



STATE OF IOWA,

Appellee,

vs.

LAWRENCE GIAMBELLUCA,

Appellant.

Appeal from the Iowa District Court for Floyd County, Paul W. Riffel, Judge.

Lawrence Giambelluca appeals his sentences, entered upon his guilty plea, for false imprisonment, neglect of a dependent person, and nonsupport of a dependent child. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John F. Fatino, Assistant State Appellate ~~Defender~~, for appellant.

Thomas J. Miller, Attorney General; Thomas S. Tauber and Thomas H. Miller, Assistant Attorneys General; and Marilyn Dettmer, County Attorney, for appellee.

Heard by Donielson, C.J., and Hayden and Cady, JJ.

DONIELSON, C.J.

On November 26, 1993, Diana Giambelluca tied her mother, Dorothy Diebolt, to a chair in their backyard. The chair was inside a dog pen, which had barbed wire around the top. The gate to the dog pen was chained and locked. The temperature outside that day was twelve degrees Fahrenheit, and the wind chill was eight degrees below zero.

Diana and her husband, Lawrence Giambelluca, then took their six children into Mason City for a children's movie. The family was gone from their home for five and one-half hours.

While the Giambellucas were in Mason City, the Iowa State Highway Patrol received an anonymous call alerting them to Dorothy's predicament. State troopers released Dorothy from her bondage, and called an ambulance. Dr. Kevin Kimm, who treated Dorothy, found she was suffering from hypothermia. He believed her life had been in danger. Dr. Kimm also found Dorothy suffered from dementia and was very confused.

When the Giambellucas returned from Mason City, they were confronted by troopers. **Neither** Lawrence nor Diana expressed any concern for Dorothy's welfare. They did express concern for a dog they had left in the house. Lawrence and Diana were arrested. The children were placed in foster care.

This appeal involves only Lawrence. Lawrence was charged with attempt to commit murder, in violation of Iowa Code section 707.11; kidnapping in the first degree, in violation of section 710.2; neglect of a dependent person, in violation of section 726.3; wanton nonsupport of a dependent adult; in violation of section 726.8(2); and six counts of nonsupport of a minor child, in violation of section 726.5.

On June 14, 1994, Lawrence pled guilty to neglect of a dependent person . He entered an *Alford* plea to one count of nonsupport of a minor child. He also entered an *Alford* plea to false imprisonment, in violation of section 710.7, which is a lesser included offense of kidnapping in the first degree. During the guilty plea proceedings, Lawrence stated he knew Dorothy had been tied up outside. The State agreed to dismiss the other charges against him.

At the sentencing hearing, the State recommended incarceration. Defendant asked for suspended sentences and to be placed on probation. He presented evidence it would be very hard for the children if their parents were incarcerated. Diana testified Dorothy had asked to sit outside, and so she dressed her warmly and placed her in a chair outside. She stated she tied Dorothy to the chair because she sometimes wandered away. At the sentencing hearing, Lawrence was very evasive about whether he knew Dorothy had been left outside. In fact, he was evasive about

whether **he realized** Dorothy had been left at home. He stated he felt the situation with Dorothy had been a stupid mistake.

The district court sentenced Lawrence to a term of imprisonment not to exceed ten years on the crime of neglect of a dependent person, a term of imprisonment not to exceed five years on the crime of nonsupport of a dependent child, and six months in the county jail for the crime of false imprisonment. The sentences are to run concurrently. Defendant appealed.

I. Defendant claims the district court abused its discretion by sentencing him to a term of incarceration. He believes his sentences should have been suspended. He points out that he has no prior criminal history. He also asserts that incarceration will not meet his rehabilitation needs.

A sentence will be disturbed by a reviewing court only upon a showing that the trial court abused its discretion. *State v. Dicks*, 473 N.W.2d 210, 215 (Iowa App. 1991). No abuse of discretion will be found unless the defendant shows such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly **unreasonable**. *Id.* Defendant has the burden of showing an abuse of discretion. *State v. LeGrand*, 501 N.W.2d 59, 64 (Iowa App. 1993).

Under section 901.5, when considering authorized sentencing options, a court should consider:

which of them or which combination of them, in the discretion of the court, will provide maximum opportunity for the rehabilitation of the

defendant, and for the protection of the community from further offenses by defendant and others.

We find no abuse of discretion in the sentence given by the district court. In giving these sentences, the court noted the serious nature of the crimes. The court stated:

The record reflects that these defendants did knowingly and recklessly expose Dorothy Diebolt to a danger which she could not have reasonably been expected to protect herself from. . . . No human being should be subjected to the type of treatment that Dorothy Diebolt was subjected to on this occasion. The family dog was afforded better treatment than she was given on this particular occasion. Again, the seriousness of this matter cannot be understated.

The court also stated it sought to deter others from committing acts of this nature. Furthermore, the court found Lawrence had been less than candid in his testimony at the sentencing hearing and had attempted to rationalize his conduct.

We agree with the district court that the crimes here were very serious. Dorothy could have suffered serious injury or death if there had not been timely intervention by law enforcement authorities. We affirm the sentences given by the district court.

II. Defendant contends he received ineffective assistance of counsel. He claims his counsel misled him into believing that if he pled guilty he would be placed on probation and that his counsel failed to investigate for exculpatory evidence. Defendant asks to have these issues preserved for postconviction proceedings. The State agrees that these issues cannot be adjudicated on the present record.

Accordingly, we determine these issues should be preserved for postconviction proceedings.

AFFIRMED.