

IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

Filed March 31, 1980

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

JOSEPH RANDOLPH KERSEY,)

Defendant-Appellant.)

0-29

64053

Appeal from Marshall District Court - M. D. Seiser, Judge.

Defendant appeals sentencing for guilty plea to four counts of second degree kidnapping in violation of section 710.3, The Code 1979, alleging trial court abused sentencing discretion. - Affirmed.

Barry S. Kaplan & Michael G. Byrne, of Fairall, Fairall, Reeves & Kaplan, Marshalltown, for plaintiff-appellee.

Thomas Miller, Attorney General of Iowa, Lona Hansen, Assistant Attorney General, and Phillip Krejci, Assistant Marshall County Attorney, for defendant-appellant.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Defendant appeals from his sentencing after pleading guilty to four counts of second degree kidnapping in violation of section 710.3, The Code 1979. All four counts arose out of the same incident. The trial court sentenced defendant to twenty-five years in prison for each count, with the sentence for count one to run concurrently with the sentence for count two, the sentence for count three to run concurrently with the sentence for count four, and both concurrent sentences to run consecutively for a total sentence of fifty years. Defendant contends the sentence was an abuse of discretion. We affirm.

Second degree kidnapping is a class B felony carrying a maximum sentence of twenty-five years. §§ 710.3, 902.9(1), The Code 1979. The trial court had discretion to impose consecutive sentences for two or more separate offenses. § 901.8, The Code 1979. Defendant has not contended that the separate counts of kidnapping arising out of the same criminal act did not constitute separate offenses for the consecutive sentencing purposes of section 901.8. Defendant only contends that the trial court abused its discretion in basing its sentencing decision on general deterrence grounds, unduly emphasizing the necessity to protect society from crimes of this nature over the actual protection necessary to protect society from this particular defendant.

The sentence was within the statutory limits and as such cannot be considered excessive unless it resulted from an abuse of discretion. State v. Grimme, 274 N.W.2d 331, 338 (Iowa 1979). For a trial court to abuse its sentencing discretion, "the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." State v. Noonan, 246 N.W.2d 236, 237 (Iowa 1976) (quoting State v. Warner, 229 N.W.2d 776, 783 (Iowa 1975) (quoting Wendel v. Swanberg, 384 Mich. 468, 475-76, 185 N.W.2d 348, 351 (1971))). A trial court's emphasis on general deterrence clearly does not constitute such an abuse of discretion. The court must properly consider the public interest, as well as that of the defendant, in determining a proper sentence. State v. Cupples, 260 Iowa 1192, 1197, 152 N.W.2d 277, 280 (1967). The punishment must be meted out to fit the crime as well as the individual defendant. Id. "It is not so important that the particular offender be punished, or that revenge be had; but that a warning that crime has its penalties should be given." State v. Rinehart, 255 Iowa 1132, 1141, 125 N.W.2d 242, 247 (1963). We conclude that the trial court properly considered general deterrence in determining a proper sentence for defendant and did not abuse its discretion in so sentencing defendant.

AFFIRMED.