FILED
AUG 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed August 29, 1985
vs.	)	
MARK ANDREW HARRINGTON,	)	5-298 84-1416
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Woodbury County - James P. Kelley, Judge.

Defendant appeals from the judgments and sentences for second-degree murder and willful injury, in violation of Iowa Code sections 707.3 and 708.4 (1981). **AFFIRMED.**

Charles L. Harrington, Appellate Defender, and B. John Burns, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Marcia Mason, Assistant Attorney General, for plaintiff-appellee.

Heard by Donielson, P.J., and Snell and Hayden, JJ.

DONIELSON, P.J.

Defendant appeals from the judgments and sentences for second-degree murder and willful injury, in violation of Iowa Code sections 707.3 and 708.4 (1981), respectively, asserting that the trial court erred in not granting a continuance of resentencing for purposes of completion of a new presentence investigation report, and in refusing to consider the supplemental report in its decision to impose consecutive sentences. We affirm.

The State asserts that the trial court did not abuse its discretion in not granting a continuance of resentencing for purposes of completion of a new presentence investigation report, and defendant's claim regarding the trial court's failure to consider the updated report was not preserved for appeal and in the alternative, the trial court did not abuse its discretion by not considering the supplemental report when deciding to impose consecutive sentences.

On May 16, 1984, Harrington's case was remanded for resentencing due to the trial court's failure to set out reasons for the sentence imposed. See State v. Harrington, 349 N.W.2d 758, 763 (Iowa 1984).

Prior to the resentencing, Harrington requested and was granted a presentence investigation. A presentence investigation update was filed. The update included a letter from the acting warden of the men's reformatory in Anamosa, reporting Harrington's progress while incarcerated since the original sentencing in 1982, and a recommendation by a probation officer that Harrington be given consecutive sentences. Defense counsel was dissatisfied with the report and moved for a continuance of the resentencing so that another report could be filed. The motion was overruled.

Harrington was sentenced to a term of imprisonment not to exceed 25 years for the second-degree murder conviction and a consecutive term not to

exceed 10 years for the willful injury conviction. The trial court stated in the record that it did not consider the updated report in imposing sentence.

I. Continuance of Resentencing

On appeal, defendant contends the trial court abused its discretion by not granting a continuance of sentencing for purposes of completion of a new presentence investigation report. We find no merit in defendant's position.

A sentence within the statutory limits will be set aside only for an abuse of discretion. State v. Inger, 292 N.W.2d 119, 126 (Iowa 1980). The trial court ordered an updated presentence report. After such report was prepared, defendant objected to the report because he was dissatisfied with its content. Defendant then sought to postpone the sentencing until another, and supposedly more favorable, report could be made. The trial court reviewed the original presentence report and gave defendant an adequate opportunity to explain his progress since being incarcerated. The defendant told the court that he had received his high school diploma, undergone drug abuse treatment and discussed other changes in his life. Even though the trial court did not rely on the updated report, the original presentence report was recent enough when combined with the defendant's oral presentation to serve the interest of informed discretion. The trial court acted well within its discretion in denying the motion for a continuance.

II. Supplemental Report

The defendant further claims he was prejudiced because the trial court did not consider the supplemental report in its resentencing hearing. The reason the trial court did not consider this report is because defendant sought a continuance to obtain a more favorable report. In light of the fact that the supplemental reports favored consecutive sentencing, it is hard to understand why defendant was prejudiced by omitting these reports from consideration.

A defendant's prison record is undoubtedly relevant to a court's exercise of discretion in resentencing. North Carolina v. Pierce, 395 U.S. 711, 723, 89 S. Ct. 2072, 2079, 23 L. Ed. 2d 656, 668 (1969). The court allowed the defendant to explain his progress while he was in prison. The record indicates the defendant thoroughly presented to the court his accomplishments and activities while serving his prison term. The trial court, however, felt this information was not sufficient to warrant a change in the sentence as given. We find no error in the trial court's decision not to consider the supplemental report.

AFFIRMED.