

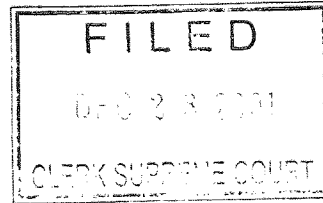
IN THE COURT OF APPEALS OF IOWA

No. 1-832 / 00-2023
Filed December 28, 2001

STATE OF IOWA,
Appellee,

vs.

ADAM LAMAR AMMONS,
Appellant.



Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,
Judge.

Adam Ammons appeals the imposition of consecutive sentences upon his
guilty pleas to being a felon in possession of a firearm and possession with intent
to deliver marijuana. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, and Cristen Odell, Assistant Attorney
General, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

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VOGEL, P.J.

Adam Ammons appeals the judgments and sentences imposed following his guilty pleas to being a felon in possession of a firearm and to possession of marijuana with intent to deliver. Ammons contends his sentences must be vacated and his case remanded for resentencing, as the district court failed to provide reasons for the imposition of consecutive sentences for the two charges. Because we find the court was effectuating the agreement of the parties, we affirm.

Background Facts and Proceedings. Ammons and the State entered into a plea agreement conditioned upon court concurrence, pursuant to Iowa Rule of Criminal Procedure 9(2). Ammons agreed to plead guilty to possession of marijuana with intent to deliver in violation of Iowa Code section 124.401(1)(d) (1999) and felon in possession of a firearm in violation of Iowa Code section 724.26 (1999), both class D felonies, in exchange for the State's dismissal of four other counts. The plea also listed, as a sentencing concession, that "[t]he State will recommend incarceration with consecutive sentences."

At the plea proceedings, the Court specifically referred to the plea agreement and asked Ammons if he understood the recommendations of the State as to the specific penalties and consecutive sentences. Ammons acknowledged he understood the agreement. The district court then heard Ammons' guilty pleas but deferred its acceptance of the plea agreement until receipt of the presentence investigation report.

At the sentencing hearing the State affirmed it had no sentencing recommendations beyond that contained in the plea agreement. Defense counsel, while recognizing the provisions of the agreement, presented mitigating factors to the court, encouraging leniency. Ammons stated he knew the court would impose incarceration and requested only a short delay in the commencement of his sentence. The court then made the following pronouncement:

The Court has reviewed the presentence investigation report as well as the Minutes of Evidence in connection with these cases. Based upon the nature and circumstances of the offenses to which the defendant has pled guilty, as well as the information contained in the presentence investigation report [and the defendant's] previous criminal involvement, it does appear that incarceration is appropriate in connection with these cases and is recommended in the plea agreement. The Court will accept the plea agreement at this time.

And in Cause No. FECR234411, it will be the judgment and sentence of the Court that the defendant should serve a term of incarceration not to exceed five years in the custody of the Director of the Department of Corrections and pay a fine in the amount of \$1,000.00.

With respect to Cause No. 232018, in Count III, and pursuant to the defendant's plea of guilty to that charge, it will be the judgment and sentence of the Court that the defendant serve a term of incarceration in the Department of Corrections of not to exceed five years and pay a fine in the amount of \$750.00. The fine in Cause No. 232018 will be suspended. The sentence of incarceration in that cause will be served consecutively to the sentence of incarceration imposed in Cause No. 234411, so that the total incarceration imposed is not to exceed ten years.

Scope of Review. We review the record before us to determine whether the trial court abused its discretion, by failing to state reasons for the sentence imposed. *State v. Oliver*, 588 N.W.2d 412, 414 (Iowa 1998).

Basis for Consecutive Sentencing. Pursuant to Iowa Rule of Criminal Procedure 22(3)(d), a court must state, on the record, the reasons for imposition of a particular sentence. It must also provide reasons for the imposition of consecutive, rather than concurrent, sentences. *State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000). While the explanation need not be detailed, it must be sufficient to allow this court to review the sentencing decision for the exercise of discretion. *Id.* Typically, failure to provide such reasoning will result in vacation of the sentence and a remand for resentencing. *State v. Marti*, 290 N.W.2d 570, 589 (Iowa 1980). However, where a sentencing court does no more than give effect to the agreement of the parties, the sentencing decision is not a product of court discretion, and any error is harmless. *See State v. Snyder*, 336 N.W.2d 728, 729 (Iowa 1983).

Reviewing the statements of the trial court, the link between the reasons given for incarceration and the imposition of consecutive sentences is tenuous, at best. However, in this matter the parties entered into a plea agreement conditioned on court concurrence. *See* Iowa R. Crim. P. 9(2). While the court did not follow the better practice of specifically stating it was binding itself to the plea agreement, that action is inferred inasmuch as the agreement was accepted and the State's sentencing recommendation was imposed. *See* Iowa R. Crim. P. 9(3) (acceptance of agreement requires imposition of disposition in agreement or one more favorable to defendant); *State v. Barker*, 476 N.W.2d 624, 627 (Iowa Ct. App. 1991) (noting a trial court is bound by plea agreement conditions, unless defendant is afforded an opportunity to withdraw his plea at sentencing). As

such, the consecutive sentences were not a product of court discretion, but an effectuation of the plea agreement terms, and any failure to comply with rule 22(3)(d) was harmless error. See *State v. Cason*, 532 N.W.2d 755, 756-57 (Iowa 1995). The judgments and sentences are therefore affirmed.

AFFIRMED.