IN THE COURT OF APPEALS OF IOWA

No. 1-037 / 00-0844
Filed February 28, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOSEPH FRANCIS LAFFEY,
Defendant-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Jackson County, James E. Kelley, Judge.

Joseph F. Laffey appeals the district court's imposition of sentences upon his convictions for second-degree sexual abuse of a six-year-old and a five-year-old. He contends the trial judge abused his discretion by imposing consecutive sentences because the facts and circumstances of the occurrence as well as his own character and potential for rehabilitation do not reasonably support a sentence that may imprison him for the rest of his life. **AFFIRMED.**

Kent A. Simmons, Davenport, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, and Philip Tabor, County Attorney, for appellee.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

MILLER, J.

Joseph F. Laffey appeals the district court's imposition of sentences upon his convictions for second-degree sexual abuse of a six-year-old and a five-year-old. He contends the trial judge abused his discretion by imposing consecutive sentences because the facts and circumstances of the occurrence as well as his own character and potential for rehabilitation do not reasonably support a sentence that may imprison him for the rest of his life. We affirm.

I. BACKGROUND FACTS AND PRIOR PROCEEDINGS

Laffey was charged with two counts of second-degree sexual abuse in violation of Iowa Code section 709.3(2) (1995). A jury found him guilty on both and the court sentenced him to two consecutive terms of not to exceed twenty-five years each. He appealed. Our supreme court affirmed his convictions, preserved his claim of ineffective assistance of counsel, vacated his sentences, and remanded the matter for resentencing. *State v. Laffey*, 600 N.W.2d 57, 59-61 (Iowa 1999). The supreme court found the trial court had considered an impermissible factor in sentencing Laffey when it stated it would be difficult to explain to the two young victims why only one sentence was imposed when there were two victims. *Id* at 62. On remand the trial court again sentenced Laffey to consecutive terms, stating reasons for the sentences. Laffey again appeals the sentences, alleging the trial court abused its discretion by imposing consecutive sentences. He argues the court did not give sufficiently specific reasons for imposing consecutive sentences and did not take into consideration appropriate factors in making its sentencing decision.

Laffey claims the facts and circumstances of the crimes and his character and potential for rehabilitation do not reasonably support a sentence that imprisons him for the rest of his life. He asserts that while the court considered his prior convictions for fraud and willful injury, it did not consider the fact Laffey had gone eleven years since serving the sentences for those crimes without any significant problems. Laffey had been married and gainfully employed during that period and had a stable life. He claims the impact on the victims is unknown and that imprisoning him to what amounts to a life sentence is excessive in this situation. Laffey further argues the court did not adequately consider his potential for rehabilitation but only considered what would provide protection for the community.

II. STANDARD OF REVIEW

We review a district court's decision to impose consecutive sentences for abuse of discretion. *State v. August*, 589 N.W.2d 740, 744 (Iowa 1999). An abuse of discretion is found only when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Id.*

III. MERITS

> Sentencing decisions of the district court are cloaked with a strong presumption in the their favor. Where, as here, a defendant does not assert that the imposed sentence is outside the statutory limits, the sentence will be set aside only for an abuse of discretion. An abuse of discretion is found only when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable.

State v. Thomas, 547 N.W.2d 223, 225 (Iowa 1996) (citations omitted).

> When a sentence is not mandatory, the district court must exercise its discretion in determining what sentence to impose.

> The district court must demonstrate its exercise of discretion by stating upon the record the reasons for the particular sentence imposed. The sentencing court, however, is generally not required to give its reasons for rejecting particular sentencing options.

Id. (citations omitted).

> In applying discretion, the court should weigh and consider all pertinent matters in determining proper sentence, including the nature of the offense, the attending circumstances, the defendant's age, character and propensities and chances of his reform. The courts owe a duty to the public as much as to defendant in determining a proper sentence. The punishment should fit both the crime and the individual.

August, 589 N.W.2d at 744; *see also State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979) (same).

Iowa Rule of Criminal Procedure 22(3)(d) requires a sentencing court to "state on the record its reason for selecting the particular sentence." Failure to state on the record the reasons for the sentence imposed requires the sentence be vacated and the case remanded for amplification of the record and resentencing. *State v. Marti*, 290 N.W.2d 570, 589 (Iowa 1980); *State v. Freeman*, 404 N.W.2d 188, 191 (Iowa Ct. App. 1987). "A statement may be sufficient, even if terse and succinct, so long as the brevity of the court's statement does not prevent review of the exercise of the trial court's sentencing discretion." *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989). A trial court must also give reasons for its decision to impose consecutive sentences. *State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000); *State v. Harrington*, 349 N.W.2d 758, 763 (Iowa 1984). "The reasons, however, are not required to be specifically tied to the imposition of consecutive sentences, but may be found from the particular reasons expressed for the overall sentencing plan." *State v. Delaney*,

526 N.W.2d 170, 178 (Iowa Ct. App. 1994); (citing *Johnson*, 445 N.W.2d at 343.) Thus, we may look to all parts of the record for the supporting reasons. *Id.*

In considering sentencing options the court is to determine, in its discretion, which of the authorized sentences will provide both the maximum opportunity for the rehabilitation of the defendant and for the protection of the community from further offenses by the defendant and others. Iowa Code §901.5. If a defendant is convicted on two or more separate counts the sentencing judge may order the second and further sentence to begin at the expiration of the first or succeeding sentence. Iowa Code §901.8.

At the resentencing hearing the State had recommended terms of imprisonment on each of the two counts of sexual abuse and that the sentences run consecutively, stating as reasons that Laffey had "committed two serious crimes of sexual abuse of two young children with severe and lasting results. . . ." The court imposed two terms of imprisonment, to run consecutively. In explaining its reasons for the sentences imposed the court noted it had considered Laffey's age, forty-one years, and his prior criminal record, convictions for defrauding an insurer and willful injury. The court had earlier stated that it had read the presentence investigation report. It showed that Laffey had earlier served terms of imprisonment on both the fraud and willful injury convictions, the prison term on the former having been imposed when probation that had been granted was revoked. The court also stated that the reasons for the sentence were "the specific deterrence of the Defendant and the nature of the two separate offenses against young children. It is also for the protection of the community and the general deterrence of others."

We find the trial court provided sufficient reasons to support its sentencing decisions. It cited the nature of the offenses, the attendant circumstances, Laffey's age, his prior criminal record, the necessity for both specific and general deterrence, and the need for protection of the community. Most significantly concerning Laffey's specific claim that the trial court abused its discretion in imposing consecutive sentences, the court noted there were not one but two victims of Laffey's crimes, stating that he "had committed two separate offenses against young children."

Addressing Laffey's specific claims, we conclude the trial court did consider the fact that the imposition of the consecutive sentences would result in Laffey being imprisoned for all or most of the remainder of his life because the trial court noted Laffey's age and Laffey's attorney had argued this would be the effect of consecutive sentences. We believe the court also considered the improbability of rehabilitation when it noted Laffey's convictions and imprisonments some eighteen and fifteen years earlier, the nature of the offenses for which he was being sentenced, and the need for protection of the community. The fact Laffey had again committed serious felony offenses years after his two previous felony convictions and ensuing prison terms can be seen as demonstrating that Laffey was not likely to be rehabilitated. We conclude the court did not abuse its discretion in determining the need for protection of the community through incapacitation and general deterrence outweighed the prospect of Laffey being rehabilitated.

We disagree with Laffey's claim that the prosecutor's statements at the resentencing indicated the effect of the crimes on the victims was not "serious or

lasting." To the contrary, the prosecutor stated that the victims had suffered "severe and lasting results."

Finally, we note the fact the two separate offenses of sexual abuse occurred in one incident is essentially irrelevant. It is clearly within the sentencing court's discretion to impose consecutive sentences for separate crimes even if they occurred in the course of a single event. *State v. Taylor*, 596 N.W.2d 55, 57 (Iowa 1999); *State v. Criswell*, 242 N.W.2d 259, 260-61 (Iowa 1976).

IV. CONCLUSION

We conclude the factors upon which the court relied fully support the exercise of its discretion to order consecutive sentences. The court did not abuse its discretion in ordering Laffey's sentences to run consecutively and we therefore affirm the sentences imposed by the district court.

AFFIRMED.