IN THE COURT OF APPEALS OF IOWA

No. 6-638 / 95-2224

STATE OF IOWA,

Plaintiff-Appellee,

vs.

WILLIAM LESLIE LOCKHART,

Defendant-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, William L. Thomas (motion for severance) and William R. Eads (sentencing), Judges.

Defendant appeals his conviction and sentence for the crime of theft in the third degree. **AFFIRMED.**

William L. Kutmus of Kutmus & Pennington, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, and Denver D. Dillard, County Attorney, for appellee.

Considered by Sackett, C.J., and Cady and Streit, JJ.

PER CURIAM

This is an appeal by a defendant challenging his conviction and sentence for third-degree theft, in violation of Iowa Code sections 714.1(1) and 714.2(3). We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

William Lockhart was formerly the director for city streets in Cedar Rapids. On November 17, 1994, he was charged with five counts of accepting a bribe from Steven Goldin. He was also charged with five counts of first-degree theft, which involved claims he aided Goldin in obtaining payments from the City by deception. In addition, Lockhart was charged with two counts of third-degree theft for improperly obtaining City property.

Lockhart's motion to sever the two counts of third-degree theft was denied by the district court. A jury found Lockhart guilty of one count of theft in the third degree, and acquitted him of all other charges. He was sentenced to 150 days in the county jail. Lockhart now appeals his conviction and sentence.

I. Lockhart claims the district court abused its discretion by denying his motion to sever the two counts of third-degree theft. He states the first ten counts concern allegations of criminal conduct between himself and Goldin. Lockhart believes the last two counts are separate and distinct because they alleged he improperly obtained City property.

We review the trial court's refusal to sever charges on an abuse of discretion standard. *State v. Delaney*, 526 N.W.2d 170, 174 (Iowa App. 1994). Under Iowa Rule of Criminal Procedure 6(1), offenses which arose from a common scheme or plan may be tried in a single action. *Id.* We find the offenses in question here arose from a common scheme or plan. The allegations arose because Lockhart was able to take money and property from the City due to his status as a public employee. We find no abuse of discretion in the district court decision denying the motion to sever.

II. Lockhart contends the district court improperly considered the eleven counts on which he was acquitted in entering sentence in this case. He also claims the court did not state specific reasons for the sentence imposed.

We find the district court sufficiently set forth the reasons for the sentence. The court stated: (1) the sentence could act as a deterrent to defendant and others; (2) the offense was a violation of public trust; (3) this was not a case of youthful impulse; and (4) defendant did not voluntarily return the stolen property. Additionally, the court stated it would not consider the charges in which there had been an acquittal. We find no abuse of discretion in the sentence given.

We affirm Lockhart's conviction and sentence for third-degree theft. Costs of this appeal are assessed to Lockhart.

AFFIRMED.