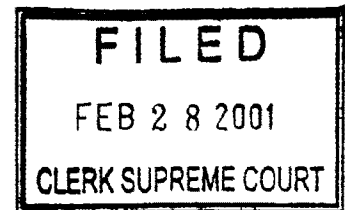


IN THE COURT OF APPEALS OF IOWA

No. 0-835 / 00-0878
Filed February 28, 2001



STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL RICHARD HAYSLIP,
Defendant-Appellant.

Appeal from the Iowa District Court for Jones County, Lynne E. Brady,
Judge.

Defendant appeals from the judgment and sentence entered upon his
conviction for two counts of vehicular homicide. **CONVICTIONS AFFIRMED,**
SENTENCES VACATED, AND CASE REMANDED FOR RESENTENCING.

Philip Fontana and John L. Lane, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Karen Doland and James Kivi,
Assistant Attorneys General, and Connie S. Ricklefs, County Attorney, for
appellee.

Heard by Streit, P.J., and Hecht and Vaitheswaran, JJ.

HECHT, J.

On appeal from the judgment and sentence entered upon his conviction for two counts of vehicular homicide, Michael Hayslip contends the court erred in failing to provide him a copy of the presentence investigation three days prior to sentencing and failing to state on the record the reasons for imposing consecutive sentences. We affirm the convictions, vacate the sentences, and remand the case for resentencing.

I. Factual Background and Proceedings. On May 3, 1999, Hayslip was driving his Corvette approximately 108 miles per hour when he lost control and struck another car. Hayslip's passenger, Michael Mead, and the driver of the other car, Barbara Bruegger, were killed as a result of the accident. The State charged Hayslip with two counts of vehicular homicide in violation of Iowa Code section 707.6A(2)(a) (1997) and two counts of vehicular homicide while driving intoxicated in violation of Iowa Code section 707.6A(1). On February 18, 2000, Hayslip pleaded guilty to the two counts of vehicular homicide and, in exchange, the State dismissed the two counts of vehicular homicide while driving intoxicated. Sentencing was scheduled for April 14, 2000. A presentence report was filed with the clerk of district court on April 11, 2000, but not received by defense counsel until the next day. At the sentencing hearing Hayslip requested the sentencing be rescheduled because the presentence report had not been received by him at least three days before the hearing. He argued Iowa Code section 901.4 entitled him to have the report in his possession for at least three

days before sentencing. The State resisted the request and the district court denied it. In its ruling, the court stated:

After a review of the file and, in particular, after relying and reading the case of *State v. Dake*, which deals with the delay on the victim impact statements, the application to reschedule sentencing is denied. However, the victim impact statements will now be removed from the presentence investigation and they will not be considered as part of this sentencing.

The prosecutor then read a victim impact statement into the record. The district court sentenced Hayslip to serve a ten-year term of imprisonment on each count, to be served consecutively.

II. Standard of Review. We review the record to determine if the district court abused its discretion in failing to state reasons for the sentence imposed. *State v. Oliver*, 588 N.W.2d 412, 414 (Iowa 1998). An abuse of discretion will be found only when a court acts on grounds clearly untenable or to an extent clearly unreasonable. *State v. Mudra*, 532 N.W.2d 765, 766 (Iowa 1995).

III. Merits. Hayslip contends the sentences imposed by the district court were contrary to the law. He argues the district court failed to give sufficient reasons for imposing consecutive sentences. Iowa Rule of Criminal Procedure 22(3)(d) requires the district court to state its reasons for selecting a particular sentence on the record. Iowa R. Crim. P. 22(3)(d). The district court is also required to state its reasons for imposing consecutive sentences on the record. *Oliver*, 588 N.W.2d at 414. At sentencing in this matter, the district court made the following statement:

Pursuant to the criteria set out in Iowa Code section 901.3, the Court has considered the Defendant's age, his social history, his prior record, the fact that since this incident, he has continued to

consume alcohol, but more particularly, the Court has considered the circumstances reflected in the minutes of testimony and the fact that two people died because of the Defendant's intentional act, and there are no obvious mitigating circumstances with regard to the incident.

For those reasons, on Count II and Count IV, it is the judgment and sentence of this Court that the Defendant is committed to the custody of the director of the department of adult corrections for an indeterminate term not to exceed ten years. He is ordered to make restitution as set out in the amended statement of pecuniary damages through a plan of payment to be submitted by the institution. He is ordered to pay court costs.

The sentences in Count II and Count IV, judgment to issue forthwith. Sentences will run consecutive.

The district court provided sufficient reasons to support its decision to impose the maximum term of incarceration for each count.

In our supreme court's most recent *published* pronouncement on this subject, the court vacated a sentence in a case in which the district court "provided sufficient reasons to support its decision to impose a term of incarceration" but failed to "provide reasons for its decision to impose consecutive sentences." *State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000). As in *Jacobs*, the district court in this case failed to provide reasons for its decision to impose consecutive sentences. Accordingly, the convictions of the district court are affirmed, the sentences vacated, and the case is remanded for resentencing. Because of our resolution of this issue, we do not address Hayslip's arguments regarding the timeliness of service of the presentence investigation report.

CONVICTIONS AFFIRMED, SENTENCES VACATED, AND CASE REMANDED FOR RESENTENCING.