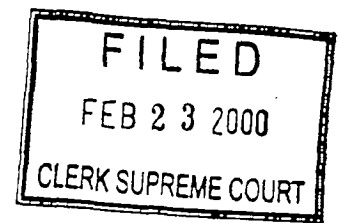


IN THE COURT OF APPEALS OF IOWA

No. 1999-473 (9-730) / 98-2139
Filed February 23, 2000



STATE OF IOWA,
Appellee,

vs.

TEHRRENCE DEVON BURRAGE,
Appellant.

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

Defendant appeals the consecutive sentences entered upon his guilty pleas to second-degree robbery and assault with intent, contending the court abused its discretion in ordering the sentences to be served consecutively. **AFFIRMED.**

Kent A. Simmons, Davenport, for appellant.

Thomas J. Miller, Attorney General, **Julie H. Brown**, Assistant Attorney General, **William E. Davis**, County Attorney, and **Joseph Grubisich**, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Hecht, JJ.

VOGEL, J.

Terrence Devon Burrage appeals the sentences following his guilty plea to ~~second-degree~~ robbery and assault with intent. He asserts the court erred in imposing consecutive sentences for the two convictions without stating adequate reasons for doing so.

Background facts. Burrage was charged with robbery in the first degree and willful injury. He pled guilty to the lesser charges of robbery in the second degree and assault with intent. In November, 1998, he was sentenced to an indeterminate term of ten years for the robbery conviction and two years for the assault conviction. These sentences were ordered to run consecutively. Burrage appeals the consecutive nature of his sentences, asserting the court did not properly state its reasons for selecting consecutive over concurrent terms of incarceration.

Scope of review. Our review is for correction of errors at law. Iowa R. App. P. 4; *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). A sentence imposed by the trial court will be overturned only for an abuse of discretion. *Id.* Sentencing decisions of the trial court are cloaked with a strong presumption in their favor, and an abuse of discretion will not be found unless the defendant shows that such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995).

Consecutive sentences. Burrage contends it was an abuse of discretion to order consecutive sentences because the court failed to consider the necessary factors or adequately state its reasons for ordering such sentences.

When imposing a sentence, the court must state the reasons for the sentence decided upon, including why consecutive sentences were selected. See *State v. Delaney*, 526 N.W.2d 170, 178 (Iowa App. 1994). During the proceeding, the court stated:

The Court is required to state on the record its reasons for the sentencing. The Court has taken into account defense counsel's elocution [sic] regarding the Defendant's difficulties with anger management. Those difficulties, if that's what they are, show up in the Defendant's history of assault, prior robberies, a prior robbery, a prior burglary, all in juvenile court and this robbery in which after shoplifting the Defendant used a knife when confronted and an assault, which broke the jaw of a theft victim. Consecutive sentences are required for the protection of the community.

Burrage asserts the court stated only one reason for imposing consecutive sentences, the protection of the community, failing to consider other allowable, relevant factors, such as defendant's age, character, propensities, chances of reform, and attending circumstances. Iowa Code sections 901.2 and 901.3; *State v. Kendall*, 167 N.W.2d 909, 911 (Iowa 1969). The court fails to properly exercise its discretion when a sentencing decision is based on a single factor. See *State v. Dvorsky*, 322 N.W.2d 62, 66-67 (Iowa 1982). However, failure to acknowledge each mitigating circumstance does not indicate the court did not consider them when they are included in the record. See *State v. Boltz*, 542 N.W.2d 9, 11 (Iowa App. 1995). Here, it is clear the record provided several sources of information, including a presentence investigation report which contained Burrage's age, history of violence and criminal activity, the nature and violence of his current convictions, his anger management issues, and a conclusion of his motivation for rehabilitation. The court also heard defense counsel's narrative outlining Burrage's background and difficulties. In rendering

its decision, the court specified several considerations it used in determining consecutive sentences were appropriate, including Burrage's age, history, the violent nature of the case and specific circumstances.

Burrage also alleges the court failed to take into account his opportunity for rehabilitation and focused solely on what was best for society. See *State v. Robbins*, 257 N.W.2d 63, 70 (Iowa 1977) (it is the duty of the court to exercise the sentencing option which will best accomplish justice for both society and the individual). Again, however, it is clear the court considered the whole record in determining the sentence, including Burrage's background as a mitigating factor and his failure to utilize past opportunities for rehabilitation. Because the court considered the entire record and adequately stated its reasons for ordering consecutive sentences, we find there was no abuse of discretion.

AFFIRMED.