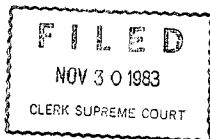


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,)

Plaintiff-Appellee,)

Filed November 30, 1983 214

vs.)

TERRY DEAN FOERSTER,)

Defendant-Appellant.)

3-359
83-488

Appeal from Poweshiek District Court - Richard J. Vogel, Judge.

Defendant appeals from the sentence imposed on his guilty-plea conviction of assault in violation of Iowa Code § 708.2(2). AFFIRMED.

LuAnn White, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Sherie Barnett, Assistant Attorney General, for plaintiff-appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

DONIELSON, P.J.

Defendant appeals from the sentence imposed on his guilty-plea conviction of assault in violation of Iowa Code § 708.2(2). He claims that the lower court erred, without adequate reason stated, in reconsidering his sentence so that it ran consecutively rather than concurrently with another assault sentence. We affirm.

Defendant entered a plea of guilty to a serious misdemeanor of assault in violation of Iowa Code section 708.2(2) which punishes an assault which is committed "without the intent to inflict a serious injury upon another" but which does in fact cause "bodily injury or disabling mental illness." The trial court initially sentenced defendant to imprisonment for one year on this charge to run concurrently with a previously imposed thirty-day sentence for a simple misdemeanor conviction arising from the same incident. Prior to sentencing, defendant had expressed the desire that he be sent to the Anamosa reformatory, rather than to some other penal institution, in the event an "extended period" of incarceration was imposed. Therefore the sentencing court directed that the Anamosa reformatory be the "reception center" for defendant. Two weeks after the initial sentencing, defendant was brought before the court for reconsideration of sentence pursuant to Iowa Code section 903.2. At that time the court stated it had learned that the Anamosa reformatory would not accept defendant unless his sentence exceeded one year. The court stated defendant could be sent to Anamosa only if his one-year sentence was made consecutive to the previously imposed thirty-day sentence, so that the period of total incarceration would exceed one year. The court then asked defendant his preference; he stated that he wished the sentences to be consecutive so that he could be sent to Anamosa. The court then imposed an amended sentence providing that the one-year term on the present charge would run consecutively to the previously imposed thirty-day sentence. This appeal followed.

Defendant challenges the reconsideration of his sentence on double jeopardy

and multiple punishment grounds; he also claims that the court abused its discretion in changing his sentence without stating an adequate reason for doing so. It is settled that one's right to protection against double jeopardy and multiple punishment may be waived. State v. Birkestrand, 239 N.W.2d 353, 363 (Iowa 1976).

The following exchange occurred at the hearing on sentence reconsideration:

[The Court:] Mr. Foerster, the only way that I can send you to Anamosa is if that sentence would run consecutively rather than concurrently with any sentence you may now have out of any incident or related charge. What is your wish?

THE DEFENDANT: To go to Anamosa consecutive sentence as you're about to announce.

A more clear waiver of the rights raised by defendant in this appeal can hardly be imagined. In addition, the record indicates that the sentencing court went out of its way to accommodate defendant's wish to be sent to Anamosa rather than elsewhere; in fact, the entire sentence reconsideration procedure took place in order to achieve that end. Defendant will not now be heard to challenge the procedure by which he was able to attain his desired result.

We find neither error nor abuse of discretion in the modification of defendant's sentence and therefore affirm.

AFFIRMED.