IN THE COURT OF APPEALS OF IOWA

No. 0-231 / 99-811
Filed May 31, 2000

STATE OF IOWA,

Plaintiff-Appellee,

vs.

ROBERT WILLIAM KERNS,

Defendant-Appellant.

FILED
MAY 3 1 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, James R. Havercamp, Judge.

Defendant appeals from the judgment and sentence entered following his guilty pleas to four counts of second-degree robbery and one count of second-degree theft. **AFFIRMED.**

Kent A. Simmons, Davenport, for appellant.

Thomas J. Miller, Attorney General, Kristin Mueller, Assistant Attorney General, William E. Davis, County Attorney, and Jerald Feuerbach, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Vaitheswaran, JJ.

HUITINK, J.

I. Background Facts and Proceedings.

In Scott County criminal case No. FEC214098, Kerns was charged with first-degree burglary and second-degree theft. In case Nos. FEC216015, FEC216016, FEC216017, FEC215760, and FEC215789, the State charged Kerns with five separate second-degree robberies. In exchange for Kern's guilty pleas to second-degree robbery in case Nos. 216015, 216016, 216017, 215760 and second-degree theft in case No. 214087, the State agreed to dismiss the first-degree robbery count in 214087 and 215789.

The plea agreement also provided:

> The State will recommend incarceration of 10 years in FECR216015 and FECR216016 consecutive. The State recommends that the sentences in FECR216017 and TRC 215760, FECR214087 be concurrent to FECR216015 and FECR216016 for a total sentence of 20 years. The defendant understands that Robbery Second is a forcible felony and that incarceration is mandatory and that he will also be subject to serving 85% of the term of imprisonment. The State's recommendation is conditioned on the Defendant's making restitution in FECR214087 in the amount of $350.00 payable to Iowa Pawn Shop, 225 E. 2nd Street, Davenport, Iowa and restitution in FECR216015 in the amount of $88.00 payable to Comfort Inn, 7222 N.W.2d Blvd, Davenport, Iowa.

Upon tender of Kerns's guilty pleas, the district court deferred its decision to accept or reject the plea agreement until receipt of a presentence report. *See* Iowa R. Crim. P. 9(2). Kerns's guilty pleas were accepted and following a subsequent sentencing hearing, the court imposed the sentence provided in the plea agreement.

On appeal Kern contends the district court abused its sentencing discretion and demands the sentences imposed be vacated and a remand for resentencing. Kern also contends he was denied effective assistance of counsel.

II. Sentencing.

We review the district court's sentencing decision for an abuse of discretion. *State v. Mai*, 572 N.W.2d 168, 170 (Iowa App. 1997). No abuse of discretion will be found unless the defendant shows that such discretion was exercised for reasons clearly untenable or to an extent clearly unreasonable. *Id.*

In exercising its discretion, the district court is to weigh all pertinent matters in determining a proper sentence, including the nature of the offense, the attending circumstances, the defendant's age, character, and propensities or chances for reform. *State v. Cooley*, 587 N.W.2d 752, 753 (Iowa 1998); *State v. Johnson*, 513 N.W.2d 717, 719 (Iowa 1994). Each sentencing decision must be made on an individual basis, and no single factor alone is determinative. *Johnson*, 513 N.W.2d at 719.

When a sentence is not mandatory, the district court must exercise its discretion in determining what sentence to impose. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). The sentencing court must state on the record its reasons for selecting the sentence imposed. Iowa R. Crim. P. 22(3)(d); *State v. Taggart*, 525 N.W.2d 877, 882 (Iowa App. 1994). The purpose of this rule is to allow the appellate courts to determine whether the trial court abused its sentencing discretion. *State v. Matlock*, 304 N.W.2d 226, 228 (Iowa 1981).

Kerns argues the district court abused its sentencing discretion by relying on the nature of the offenses he committed to the exclusion of other relevant sentencing factors. He also claims the district court impermissibly considered an uncharged offense in arriving at its sentencing decision.

Even if we were to agree with Kerns's version of the sentencing record, we are nevertheless required to affirm. As noted earlier, the sentence imposed was that provided for in the plea agreement. Under these circumstances the sentence imposed was not the product of the district court's sentencing discretion, but merely the effectuation of the terms of the plea agreement. *See State v. Cason*, 532 N.W.2d 755, 756-57 (Iowa 1995); *State v. Snyder*, 336 N.W.2d 728, 729 (Iowa 1983). Although *Snyder* involved a failure to state reasons for the sentence imposed, we believe the rationale supporting the rule announced in that case is equally applicable in circumstances where the court's stated reasons for sentencing may be inappropriate. We affirm on this issue.

III. Ineffective Assistance of Counsel.

We review claims of ineffective assistance of counsel de novo. *State v. Allison*, 576 N.W.2d 371, 373 (Iowa 1998). Ordinarily, we preserve claims of ineffective assistance of counsel raised on direct appeal for postconviction proceedings to allow full development of the facts surrounding counsel's conduct. *State v. Atley*, 564 N.W.2d 817, 833 (Iowa 1997). However, we will resolve ineffective assistance of counsel claims on direct appeal when the record is adequate to decide the issue. *State v. Arne*, 579 N.W.2d 326, 329 (Iowa 1998).

A defendant receives ineffective assistance of counsel when (1) the defense attorney fails in an essential duty and (2) prejudice results. *State v. Bugely*, 562 N.W.2d 173, 178 (Iowa 1997). In order to meet the first test, one must overcome the "strong presumption" that his attorney's actions were reasonable under the circumstances and fell within the normal range of competency. *State v. Shumpert*, 554 N.W.2d 250, 254 (Iowa 1996). To succeed on the second test he must show that, but for counsel's error, the result of the proceedings would have been different. *State v. Buck*, 510 N.W.2d 850, 858 (Iowa 1994). An ineffective assistance of counsel claim may be disposed of if the defendant fails to prove either prong. *State v. Cook*, 565 N.W.2d 611, 614 (Iowa 1997). Therefore, we may affirm Kern's convictions on his failure to prove prejudice without deciding whether his counsel failed to perform an essential duty. *State v. Hoeck*, 547 N.W.2d 852, 863 (Iowa App. 1996).

Kern's argues his counsel provided ineffective assistance by counsel's failure to raise cruel and unusual punishment and equal protection challenges to Iowa Code section 902.12(5). He specifically argues the sentencing schemes in sections 902.12(5) and 903A.2 draw arbitrary distinctions in selecting offenses requiring an eighty-five percent mandatory minimum. We disagree.

The supreme court has already considered and resolved this issue. In *State v. Lara*, 580 N.W.2d 783, 785 (Iowa 1998), the court held that a sentence imposed under Iowa Code section 902.12 does not constitute cruel and unusual punishment. In addition the court held that neither the length of the mandatory sentence nor the requirement of serving eighty-five percent of it violates a

defendant's constitutional rights. *Id.* at 786. Furthermore, the supreme court has found an equal protection challenge to Iowa Code section 902.12 to be without merit. *State v. Ceaser*, 585 N.W.2d 192, 200 (Iowa 1998) (holding persons committing the criminal offenses not included in the classification established by section 902.12 are not situated similarly to defendant because the crimes of which they are guilty are distinguishable from second-degree robbery).

For these reasons, we find Kerns received effective assistance of counsel because counsel did not breach a duty by failing to raise a meritless challenge to the sentencing scheme.

AFFIRMED.