IN THE COURT OF APPEALS OF IOWA

No. 8-060 / 94-2053

000449

STATE OF IOWA,

Plaintiff-Appellee,

vs.

LAMONT RICHARD,

Defendant-Appellant.

FILED
MAR 27 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, John A. Nahra, Judge.

Defendant appeals from his convictions for willful injury, terrorism, criminal gang participation, and going armed with intent. **AFFIRMED.**

Philip T. Ramirez of Newport, Bell, Leon & Ramirez, Davenport, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, William E. Davis, County Attorney, and H. J. Pries, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

Lamont Richard appeals the sentences imposed following guilty pleas to charges of willful injury, terrorism, criminal gang participation, and going armed with intent. Richard alleges the trial court abused its discretion when it sentenced Richard to consecutive sentences. We affirm.

Richard admits to participating in a drive-by shooting which resulted in serious injuries to Michael Sandoval and Erardo Sanchez, members of a rival gang. At the plea hearing, the State read the plea agreement into the record.

> With respect to both defendants Lamont Richard in 174294 . . . the plea agreement is that the defendants are to plead to Counts IV, V, VI, and VII, open, Count IV being Willful Injury; Count V, Terrorism; Count VI, Criminal Gang Participation; Count VII, Going Armed with Intent. These are open pleas, that the State will dismiss Counts I, II, III, counts of Attempted Murder at the time of sentence.

The judge later ensured Richard understood the sentencing possibilities as a result of the plea agreement.

> THE COURT: We've talked about four offenses. If you plead guilty to all four, these are open pleas. And the sentencing judge, whoever that might be, it might be me and it might be someone else, but that judge will have the option of making the sentences run consecutively. And by consecutive sentences we mean that all of the sentences would be added together. . . . So the court would have the option of sentencing you to a total of 25 years incarceration plus fines which would add up to $32,500. Do each of you understand that . . . ?
>
> RICHARD: Yes, sir.

The presentence investigation listed Richard as twenty-one years old and showed an extensive criminal history; Richard had been involved with the justice

system on fourteen previous occasions. The report stated Richard needs to distance himself from criminal street gangs. Also, the report noted, "in order to facilitate change he will have to have a very structured and supportive environment." The report recommended incarceration and consecutive sentences.

At sentencing, Richard requested the sentencing court enter concurrent sentences. Both the presentence investigation and the State suggested incarceration with consecutive sentences. The sentencing court stated:

> I have reviewed this file and as well your presentence investigation. I have concluded today as a result of that review that incarceration is required in your case. I have concluded that probation is not a viable alternative, that it will not serve your interests, nor the interests of the members of this community. It would not offer you the structure or programming necessary to assist you in the rehabilitative process. I am convinced that a period of structured incarceration is required to assist you in that process and make you understand that there are consequences for your action. Secondly, this is -- these are serious offenses. They can have serious consequences for others. It involved -- these incidents involved the use of firearms and gunfire, resulted in injury to others. I have concluded that in order to protect members of this community from such activity from you that incarceration is required. And lastly, I have also determined that if you ever find yourself similarly situated in the future that it is my hope that a period of incarceration will deter you from any future activity like this, and as well, that it will serve to send a deterrent message to others similarly situated that this kind of conduct will not be tolerated.
>
> Pursuant then to your plea of guilty to the charge of Willful Injury, . . . it is the judgment and sentence of the Court that you be and are hereby committed to the custody of the Director of the Iowa Department of Corrections for a period not to exceed ten years.
>
> Regarding [the remaining three counts], it is the judgment and sentence of the Court that you be and are hereby committed to the custody of the Director of the Iowa Department of Corrections for a period not to exceed five years on each count. . . . The sentences imposed . . . shall run consecutively.

I. STANDARD OF REVIEW. We review the sentencing court's imposition of consecutive sentences for abuse of discretion. *State v. Harris*, 528 N.W.2d 133, 135 (Iowa App. 1994). We will not find an abuse of discretion unless such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Selestan*, 515 N.W.2d 356, 358 (Iowa App. 1994). Defendant has the burden of showing an abuse of discretion. *Harris*, 528 N.W.2d at 135.

II. IMPOSITION OF CONSECUTIVE SENTENCES. The trial court generally has discretion to impose concurrent or consecutive sentences for convictions on separate counts. *State v. Delaney*, 526 N.W.2d 170, 178 (Iowa App. 1994); *see also* Iowa Code § 901.8 (1995). Under Iowa Code section 901.5, when considering authorized sentencing options, the trial court should consider:

> [W]hich of them or which combination of them, in the discretion of the court, will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.

Iowa Code § 901.5; *Harris*, 528 N.W.2d at 135. In addition, when determining a proper sentence, a court should consider the nature of the offense, the attending circumstances, and the defendant's age, character, and propensities or chances for reform. *Id.*

The trial court is required to state on the record its reasons for selecting the particular sentence in a criminal case, including the reasons for imposing consecutive sentences. Iowa R. Crim. P. 22(3)(d); *see also Delaney*, 526 N.W.2d at 178. The

reasons, however, are not required to be specifically tied to the imposition of consecutive sentences, but may be found from the particular reasons expressed for the overall sentencing plan. *Id.* Thus, we look to all parts of the record to find the supporting reasons. *Id.*

Given the entire record, including the plea agreement, the plea proceedings, the sentencing hearing, and the presentence investigation, we find the sentencing court did not abuse its discretion when it sentenced Richard to consecutive sentences. Further, we note the trial court ensured Richard was fully aware of the possibility of consecutive sentences when it accepted the plea agreement.

For these reasons we affirm the sentence as entered.

AFFIRMED.