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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

445

STATE OF IOWA,)

Plaintiff-Appellee,) Filed April 30, 1985

vs.)

CLYDE ELMO MILNE,) 5-82 / 84-297

Defendant-Appellant.)

Appeal from the Iowa District Court for Benton County - Thomas L. Koehler, Judge.

Defendant appeals from his convictions and consecutive sentences for two counts of the aggravated misdemeanor of involuntary manslaughter in violation of Iowa Code section 707.5(2). AFFIRMED.

Kermit L. Dunahoo, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General, and Pamela S. Greenman, Assistant Attorney General, for plaintiff-appellee.

Heard by Donielson, P.J., and Snell and Sackett, JJ.

SNELL, J.

The defendant, who was allegedly driving while intoxicated, was involved in a car crash which killed two people. He was initially charged with two counts of the class D felony of involuntary manslaughter in violation of Iowa Code section 707.5(1), as well as other charges. However, pursuant to a plea bargain, he entered guilty pleas to two counts of the aggravated misdemeanor of involuntary manslaughter in violation of Iowa Code section 707.5(2).

The trial court later sentenced the defendant to two consecutive prison terms of up to two years each.

The defendant has appealed from his convictions and sentences. He contends the trial court abused its sentencing discretion by imposing sentences of imprisonment rather than probation and by imposing consecutive rather than concurrent sentences.

Our standard of review in determining whether a trial court properly sentenced the defendant is set forth in State v. Gibb, 303 N.W.2d 673, 687 (Iowa 1981);

> We have held when a sentence is imposed within statutory limits, it will be set aside only for an abuse of discretion. State v. Nelson, 279 N.W.2d 1, 3 (Iowa 1979). Ordinarily an abuse of discretion will be found only where there is no support for the decision in the record. State v. Noonan, 246 N.W.2d 236, 237 (Iowa 1976). The trial court, within the limits of applicable statutes, had the discretion to select a sentencing combination that would "provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others." § 901.5, The Code.

Defendant asserts that the trial court abused its discretion in sentencing when it emphasized the defendant's previous alcohol-related incidents. He argues that successful completion of a 31-day voluntary treatment program immediately before sentencing indicates defendant's chances for reform and that the court wrongfully emphasized the defendant's past non-treatment. Finally, defendant argues that community opinion is an improper consideration. He claims that

statements by the presentence investigators indicating a "lack of remorse by the defendant" and by the prosecutor arguing that the "community wants this person punished" mandate a closer scrutiny of the court's decision.

Defendant's past criminal record indicated convictions for public intoxication in 1977 and 1980 and for operating a motor vehicle while under the influence in 1980. Defendant did not seek treatment at the alcohol treatment center until nine months following the accident in which he is currently charged. The record indicates that prior to that defendant had spurned offers of treatment for his drug problem.

At the sentencing, the court gave the following reasons for the sentence imposed:

> I would think that a person who would get picked up for Public Intoxication, Drunk Driving, would at least make an effort to control his or her drinking. You failed to do this and I think that you've been completely irresponsible in this area and I think the maximum sentence is appropriate . . . .
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> The reasons for and the facts supporting the sentence are as follows: The Defendant's age, his occupation; his prior record; family circumstances; the nature of the offense; the Defendant's criminal behavior caused the death of two persons, one of whom was seven months pregnant; the need for the Defendant to be held accountable for his criminal behavior; the need of the community to be protected from further offenses by the Defendant and others; the recommendation of the presentence investigator; and the recommendation of the State.

In State v. Dvorsky, 322 N.W.2d 62 (Iowa 1982), the court set forth the minimal factors which must be considered in sentencing a defendant:

> We have said that the nature of the offense; the attendant circumstances; and the defendant's age, character, propensities, and chances of reform are "minimal essential factors" to be considered when exercising sentencing discretion.

Iowa Code section 901.5 (1983) requires that the court determine the sentencing option which: "will provide maximum opportunity for the rehabilita-

tion of the defendant, and for the protection of the community from further offenses by the defendant and others."

After reviewing the record, we conclude that the trial court did not abuse its discretion in sentencing the defendant. A reading of the sentencing transcript indicates that the court considered a wide variety of factors in sentencing the defendant; more so than is minimally required by Dvorsky. We disagree with defendant's argument that the State gave undue weight to the fact that deaths had occurred in this case or that community opinion demanded this sentence.

We also reject defendant's argument that the trial court abused its discretion in ordering that the sentences run concurrently rather than consecutively. In State v. Criswell, 242 N.W.2d 259 (Iowa 1976), the court discussed the issue of ordering consecutive sentences in lieu of concurrent sentences:

> It is generally recognized that if accused . . . is convicted on several counts of an indictment, and each count is for a separate and distinct offense, a separate sentence may be pronounced on each count, and the court may pronounce separate and distinct sentences which are cumulative, and are to run consecutively. This is true, even though the several offenses were committed in the course of a single transaction.
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> * * *
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> We also view the question as a matter of statutory construction. Iowa statutes allow imposition of consecutive sentences for convictions obtained under the circumstances presented.

Id. at 260-61.

We find that the trial court did not abuse its discretion in ordering consecutive sentences.

The sentence of the trial court is affirmed.

AFFIRMED.