IN THE COURT OF APPEALS OF IOWA

No. 6-123 / 94-1908

STATE OF IOWA,

Plaintiff-Appellee,

vs.

DAVID J. SHEDLOCK,

Defendant-Appellant.

FILED
MAY 31 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Patricia Houlihan and Scott Rosenberg, Associate District Judges, and Rodney J. Ryan, Judge.

Defendant appeals his convictions and sentences for criminal trespass and interference with official acts. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Annette L. Hitchcock, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Ann E. Brenden, Assistant Attorney General, John P. Sarcone, County Attorney, and Joseph Weeg, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Habhab and Cady, JJ. Vogel, J., takes no part.

PER CURIAM

Defendant David Shedlock appeals from his convictions for criminal trespass and interference with official acts. He contends (1) the trial court erred in giving him a suspended sentence after his sixth amendment right to counsel had been violated; (2) the trial court should not have made a no-contact order a condition of probation; (3) the trial court abused its discretion in imposing consecutive sentences; and (4) the trial court erred in not granting his motion for change of venue. We affirm.

Defendant was arrested on February 18, 1993, and charged with two simple misdemeanors, criminal trespass and interference with official acts. These charges arose out of defendant's anti-abortion protest activities. Defendant filed a written request for the appointment of an attorney to represent him on the charges. His request indicated he was aware he could serve time in jail if convicted, and an attorney was appointed on May 10, 1993, to represent defendant on the two charges.

On October 4, 1993, the day on which trial was set to begin, defendant filed a motion to dismiss his attorney. The motion stated, "The accused requests that the attorney be dismissed in this case. I do not wish another attorney at this time." Before trial, the trial judge questioned defendant to be certain he wanted to dismiss his court-appointed attorney and represent himself. The prosecutor told the court and the defendant if defendant were convicted, the State would request the court order defendant to spend time in jail.

Defendant told the court at least three times he wanted his attorney dismissed and did not want the court to appoint another attorney to represent him. Though adamant he wanted his lawyer dismissed and wanted to represent himself, defendant made statements indicating he was not waiving any of his rights, including his right to an attorney.

Defendant argues the trial court failed to make the requisite inquiry to determine his waiver was voluntary and intelligent. He claims it was not, and he was sentenced in violation of his sixth and fourteenth amendment rights. Defendant advances his sentence must be vacated and the case remanded for resentencing without the imposition of incarceration as a sentencing option.

Defendant's constitutional right to counsel is at issue and we review all facts and circumstances de novo. *See State v. Miller*, 542 N.W.2d 241, 243 (Iowa 1995).

A defendant has a constitutional right to waive his or her right to an attorney and represent himself or herself at a criminal trial. *See Faretta v. California*, 422 U.S. 806, 807, 95 S. Ct. 2525, 2527, 45 L. Ed. 2d 562, 566 (1975); *State v. Cooley*, 468 N.W.2d 833, 836 (Iowa App. 1991). A waiver of the right to an attorney must be knowingly and intelligently made or incarceration cannot be a sentencing option. *See Faretta*, 422 U.S. at 835, 95 S. Ct. at 2541, 45 L. Ed. 2d at 581; *Argersinger v. Hamlin*, 407 U.S. 25, 37, 92 S. Ct. 2006, 2012, 32 L. Ed. 2d 530, 538 (1972); *Miller*, 542 N.W.2d at 243.

The degree of inquiry required to find a defendant has made a valid waiver of his or her sixth amendment right to counsel varies with the nature of the offense and the ability of the accused to understand the process. *See State v. Hindman*, 441 N.W.2d 770, 772 (Iowa 1989). If the nature of an offense is easily understood by a person with the defendant's education and experience and the penalty imposed on conviction is not severe, the trial court need do no more than assure defendant is aware of his or her right to have an attorney yet is willing to proceed without one. *See id.*

Defendant was charged with two simple misdemeanors. Their nature was easily understood by one in defendant's situation. Defendant had experience in the criminal justice system. Despite defendant's statements he did not want to waive any rights, defendant declared his wish to dismiss his attorney and represent himself. Defendant's waiver of his right to an attorney was knowing and intelligent.

Defendant argues the trial court should not have ordered the continuation of a no-contact order as a condition of his probation. Defendant argues continuation of the no-contact order amounts to an unauthorized "injunction against the commission of future criminal offenses." There is no basis for this argument. *See Jenney v. Iowa District Court*, 456 N.W.2d 921, 922 (Iowa 1990).

Defendant next contends it was unconstitutional to continue the no-contact order. A grant of probation rests within the broad discretion of the trial court. *State v. Ramirez*, 400 N.W.2d 586, 590 (Iowa 1987). This discretion is "subject only to the

statutory provision that the grant shall promote the rehabilitation of the defendant and the protection of the community." *Id.* A court may impose conditions necessary to promote those purposes. *See* Iowa Code § 907.6 (1993). The continuation of the no-contact order fostered the protection of the community. The provision was not unconstitutional and the trial court did not abuse its discretion in including a no-contact order as a condition of defendant's probation.

Defendant next advances the trial court abused its discretion in imposing consecutive sentences. He contends the sentences are double punishment for the same offense.

A trial court generally has discretion to impose concurrent or consecutive sentences for convictions on separate counts. *See State v. Criswell*, 242 N.W.2d 259, 260 (Iowa 1976). The duty of a sentencing court to provide an explanation for a sentence includes the reasons for imposing consecutive sentences. *See State v. Harrington*, 349 N.W.2d 758, 763 (Iowa 1984). The explanation need not be detailed, but must be sufficient enough to permit review of the trial court's discretionary action. *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989). The reasons need not be tied to the imposition of consecutive sentences but may be found from the overall sentencing plan. *See id.*

The trial court cited five reasons for the imposition of its sentence: (1) defendant's prior criminal history; (2) to deter defendant from committing further crimes; (3) to protect the public from future crimes; (4) to deter others from similar

disobedience of the law; and (5) to rehabilitate defendant. The trial court did not abuse its discretion in imposing consecutive sentences.

Defendant next contends he should have been granted a change of venue. Motions for change of venue must be filed within forty days of arraignment. Iowa R. Crim. P. 10 (2)(f), (4). Defendant's motion for change of venue was not filed until the day trial commenced. Defendant argues the grounds for his motion did not appear until immediately before trial.

Iowa Rule of Criminal Procedure 10(10)(b) requires a change of venue if the trial court determines:

> [S]uch degree of prejudice exists in the county in which the trial is to be had that there is a substantial likelihood a fair and impartial trial cannot be preserved with a jury selected from the county. . . .

In order to obtain a reversal of a conviction premised on a denial of a change of venue, a defendant must show either actual prejudice on the part of the jury or that publicity attending the case was so pervasive and inflammatory prejudice must be presumed. *State v. Green*, 457 N.W.2d 20, 23 (Iowa App. 1990).

Defendant argues pre-trial publicity, especially publicity occurring in the week prior to trial, was inflammatory and prevented him from obtaining a fair trial in Polk County. Whether publicity rises to the level of being presumptively prejudicial depends on the nature, tone, accuracy, and timing of the news reports and their impact on potential jurors. *State v. Siemer*, 454 N.W.2d 857, 860 (Iowa 1990). Mere

exposure to news accounts does not, standing alone, create a substantial likelihood of prejudice. *Green*, 457 N.W.2d at 23.

We review de novo the record made for purposes of challenging the denial of a motion for change of venue. *Siemer*, 454 N.W.2d at 860. Reversal is warranted only where the trial court's decision demonstrates an abuse of discretion. *Id.*

The trial judge reviewed the newspaper, radio, and televised reports about defendant and his activities. During voir dire, the jurors were asked if they were familiar with the news accounts and with defendant. The trial judge saw and heard the potential jurors answer questions and was in a position to assess the credibility of those who claimed impartiality. *See Siemer*, 454 N.W.2d at 861. The trial court did not abuse its discretion in denying defendant's motion for a change of venue.

AFFIRMED.