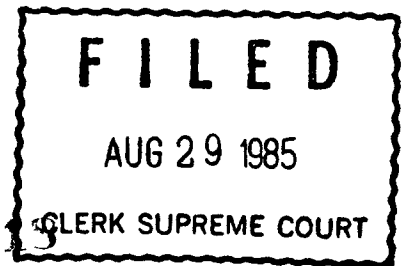


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,

)

Plaintiff-Appellee,

)

vs.

)

MARK ANTHONY BURT,

)

Defendant-Appellant.

)

Filed August 29, 1985

418

5-333
84-1478

Appeal from the Iowa District Court for Black Hawk County - L. D. Lybbert,
Judge.

Defendant appeals the court's imposition of consecutive sentences on
his conviction of burglary and being an habitual offender, and upon a prior conviction and probation revocation and sentence. **AFFIRMED.**

Charles Harrington, Chief Appellate Defender, and John P. Messina, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Ann E. Brenden, Assistant Attorney General, for plaintiff-appellee.

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

Defendant's sole claim on this appeal is that the court failed to state reasons for imposing consecutive sentences, requiring that the order imposing consecutive sentences be vacated.

Defendant was convicted of second degree burglary and of being an habitual offender, and was sentenced to an indeterminate term, not to exceed fifteen years. That sentence, in what is referred to in the record as case No. 22092, was ordered to run consecutively to the sentence in a previous case, referred to in the record as case No. 20646, where defendant had been sentenced to an indeterminate term, not to exceed five years. In case No. 20646, the sentence had been suspended and the defendant had been placed on probation. As a result of his conviction in this case, the probation in the prior case was revoked and the defendant was ordered to commence serving that indeterminate five year sentence.

I. Statement of Reasons. Defendant does not claim the court erred in either imposing the indeterminate term not to exceed fifteen years, or in revoking his probation and ordering him to serve the indeterminate term not to exceed five years. His claim is that the court failed to state a justification for making the fifteen year sentence consecutive to defendant's preexisting sentence. We disagree. We affirm the trial court and approve its action.

Rule 22(3)(d), Iowa Rules of Criminal Procedure, provides in part:

...The court shall state on the record its reason for selecting the particular sentence.

That rule has also been interpreted as requiring the statement, by the court, of the reason for ordering consecutive sentences. State v. Harrington, 349 N.W.2d 758 (Iowa 1984). (The State agreed the sentence in that case had to be vacated for resentencing.)

The proceedings undertaken by the court at the time of sentencing consisted of passing sentence upon defendant as a result of his conviction of second degree burglary and of being an habitual offender, and included the matter of the revocation of defendant's probation resulting from the previous suspended sentence. First, the court pronounced sentence upon the burglary and habitual offender conviction, and then moved on to the probation revocation matter. It is apparent that all parties involved approved that procedure and that the two matters were related, at least to the extent that the latest conviction served as grounds for revocation of the probation in the other matter.

The court, after pronouncing the term of the sentence, stated:

I have not provided that the sentence shall be concurrent with any other sentence and I have provided that the sentence shall be consecutive to the sentence in case No. 20646. [In which probation was subsequently revoked.] You may be seated. I will now state my reasons for imposing the sentence that has just been pronounced. Basically, the sentence is more or less mandated by the Iowa Criminal Code, although I don't find anything specifically in the law that says I could not suspend the sentence. But it is clear that suspending the sentence would not be appropriate in view of the fact that the defendant has not only had a prior sentence suspended, but has also before that time spent time in a prison, and it is apparent to me, then, that suspending the sentence and placing the defendant over on probation is not sufficient to deter him from committing further offenses. And there is no reasonable likelihood that he can be corrected without or by any further suspensions of the sentence or attempts to rehabilitate him within the community.

Later in the same proceedings the court took up the matter of the final revocation hearing concerning defendant's probation. During an exchange between the prosecutor and the court, the court stated:

Well Mr. Stone, I don't think that I have the power to change the sentence in this case and make it more severe than the one that was originally imposed. That is the reason why I made the sentence in the case we just concluded consecutive to this one.

II. Statutory Provisions. Section 901.8, Iowa Code, permitted the court to order that defendant's sentence run consecutively to the former sentence. That section states, in part:

If a person is sentenced for two or more separate offenses, the sentencing judge may order the second or further sentence to begin at the expiration of the first or succeeding sentence.

The criteria for setting a sentence are set forth in section 901.5, Code of Iowa. It is there stated:

After receiving and examining all pertinent information, including the presentence investigation report, if any, the court shall consider the following sentencing options. The court shall determine which of them is authorized by law for the offense, and of the authorized sentences, which 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.

Under these requirements, we believe the trial court properly exercised its discretion in pronouncing the sentence upon defendant, including the provision that the sentence would be served consecutively to the prior sentence.

III. Abuse of Discretion. A sentence within the statutory limits will be set aside only for an abusive exercise of discretion on the part of the trial court. State v. Fink, 320 N.W.2d 632, 633 (Iowa Ct. App. 1982).

There was no abuse of discretion by the trial court. It considered all of the pertinent information, and determined a sentence that was authorized by law, and which combination of alternatives would, in its discretion provide maximum opportunity for defendant's rehabilitation and for the protection of the community. Furthermore, it expressed the reasons for the whole sentence specifically as a part of the sentencing record. It further buttressed those reasons in explaining why it ordered consecutive sentencing when it responded to the prosecutor's plea in the revocation proceedings.

We believe the court adequately explained its reasons for the sentence of the defendant. We affirm the sentence in all respects.

AFFIRMED.