IN THE COURT OF APPEALS OF IOWA

No. 1-712 / 11-0262
Filed October 19, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

EDDIE CHEST,
Defendant-Appellant.

Appeal from the Iowa District Court for Dubuque County, Monica Ackley, Judge.

The defendant appeals from the consecutive sentences imposed upon his convictions for attempted murder and first-degree robbery contending the sentencing court considered an improper factor. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie Knipfer, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas Tauber, Assistant Attorney General, Ralph Potter, County Attorney, and Christine Corken, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

DANILSON, J.

On appeal, Eddie Chest argues it was impermissible for a sentencing court to consider the number of children he had fathered. This mischaracterizes the sentencing court's reasoning. We have reviewed the entire transcript and conclude the district court did not consider improper factors. It was not improper to suggest that defendant's long criminal history did not provide a model of civil behavior. In light of the defendant's repeated attempt to redirect the focus of the robbery to point to his son's actions, we find no fault in the district court placing responsibility back on the defendant.

I. Background Facts and Proceedings.

At about noon on December 4, 2009, Eddie Chest, age seventy-two, and his son, Eddie Adams, walked into Knicker's Saloon armed with sawed off shotguns and ordered the patrons onto the floor and demanded money. In his subsequent attempt to evade capture, Chest shot a police officer.

Chest was charged with attempted murder, robbery in the first degree, unauthorized possession of an offensive weapon, and possession of a firearm as a convicted felon. Chest subsequently entered into a plea agreement: he would enter an *Alford* plea[1] to a charge of attempted murder and plead guilty to first-degree robbery; the State would drop the other charges and recommend the sentences run concurrently. In accepting Chest's *Alford* and guilty pleas, the

[1] In *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167, 27 L. Ed. 2d 162, 171 (1970), the United States Supreme Court held an accused may consent to the imposition of a sentence even if unwilling or unable to admit participation in the acts constituting the crime charged.

district court informed Chest the court was not bound by the State's sentencing recommendation.

At the sentencing hearing, the district court noted the presentence investigation recommended consecutive sentences due to defendant reporting he had spent twenty-nine years of his life in prison; defendant having committed the offenses five months after being placed on parole; the violent nature of the offense and the serious injury to a police officer; and the impact on the bar patrons.

The State recommended that concurrent twenty-five year sentences be imposed because of the defendant's age, his "willingness to come forward and admit to what he did," and his cooperation in the case against his son.

Chest was represented by different counsel on the two charges. His counsel on the robbery charge argued that concurrent sentences were appropriate because Chest had "sincere remorse"; had fully cooperated with the State and "encouraged his son to resolve his case"; his age (noting "twenty-five years with seventy percent minimum will" likely be a "life sentence"); his impoverished background; the robbery was "his son's idea"—he "did what his son asked of him"; and he had been shot and suffered "painful physical injuries" as a result. Chest's counsel on the attempted murder charge also argued that Chest was taking responsibility for his actions and stated, "Mr. Chest has told me yesterday, you know, I did this. He said, I have to take responsibility for my part in this, and I don't know what's wrong with my son." Chest apologized to the officer.

The district court noted its concern that "a good portion of [Chest's] life has been spent doing things that are illegal." When the court observed Chest had come to Iowa from Illinois to commit a crime, Chest interjected: "I didn't know that. It was for my son." The court pointed out that the crime was committed in "broad daylight" and a police officer was shot. The court then continued:

> Most of the time, when I see young men come into this courtroom, I try to talk to them about rehabilitation. Change your thought process. Move forward with your lives. Become good citizens based on the fact that you're learning from your experiences. You don't seem to be able to do that, sir. And I guess the reason for what your children do, the only thing I can do is point to what you did. Twenty children. Twenty children, put into this world, that have you as a role model. One crime after the other.

The court noted other circumstances of the offense and concluded "I will not impose concurrent sentences." Chest appeals.

II. Scope and Standard of Review.

Appellate review of the district court's sentencing decision is for an abuse of discretion. *State v. Laffey,* 600 N.W.2d 57, 62 (Iowa 1999). An abuse of discretion is found when the court exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable. *Id.* A court considers all pertinent matters in determining a sentence including the nature of the offense, the attending circumstances, defendant's age, character, propensities, and chances of his reform. *Id.* Iowa Code section 901.5 requires that "after receiving and examining all pertinent information, including the presentence investigation and victim impact statements," the court is to determine which sentence "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."

III. Discussion.

Chest contends the district court abused its discretion in ordering the prison terms on each count to be served consecutively rather than concurrently because the court considered an improper factor in sentencing, i.e., the number of children he had fathered. Chest also argues in his brief "[i]t was improper for the sentencing court . . . to assume that his children are all criminals." In support, Chest cites to two cases from other jurisdictions that found it impermissible for a sentencing court to consider the fact that a defendant had fathered illegitimate children to enhance a sentence. *See People v. Bolton*, 589 P.2d 396, 400-01 (Cal. 1979) (concluding the trial court abused its discretion in expounding at length on the fact that appellant had several children, all of who received welfare support and some of whom were borne out of wedlock: "Neither the fathering of children out of wedlock nor the receipt of welfare support had any relevance to the question of whether appellant could best be rehabilitated by allowing him to continue normal community contacts."); *Bradley v. State*, 509 So. 2d 1137, 1138 (Fla. Dist. Ct. App. 1987) ("The fact that he has fathered two illegitimate children is patently an improper reason for enhancing his sentence."). We find no fault in the analysis of the cases, but neither the facts of the instant case nor the court's sentencing reasons are analogous to the cases cited by defendant.

Chest's argument mischaracterizes the district court's reasoning. While the district court did mention the number of children Chest had, it was in the context of Chest's failure to be a good role model to his children and the fact that Chest had a long history of criminal activity. Significantly, one of his sons was an

active participant in the offenses. The defendant also repeatedly asserted that the robbery was his son's idea and that the defendant did not know "what's wrong with my son." The court's response simply redirected the responsibility upon Chest who was the father and should have been the role model. There was no comment made that Chest's children were illegitimate, born out-of-wedlock, or on welfare. Nor is there any indication the court assumes all of Chest's children commit crimes.

During the sentencing hearing, the district court recited its reasons for the consecutive sentences including, the violent nature of the offense, the attending circumstances that the offense was committed in broad daylight and resulted in injury to a police officer, the defendant's criminal history, the fact that he was on parole at the time of the offenses, and his apparent inability to reform. In the court's sentencing order the court explained the reasons for imposing consecutive sentences, "the offenses were committed in broad daylight, at a very busy time of the day, while the Defendant had a loaded weapon and while many people were out and about and could have been sever[el]y injured." The factors utilized by the district court were proper sentencing considerations. *See* Iowa Code § 901.5; *Laffey*, 600 N.W.2d at 62. Accordingly, we discern no abuse of discretion in the court's sentencing decision.

AFFIRMED.