IN THE COURT OF APPEALS OF IOWA

No. 3-131 / 12-0782
Filed March 13, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

QUANATHAN NAIJI IVERY,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, John G. Linn (guilty plea) and Mary Ann Brown (sentencing), Judges.

Quanathan Ivery appeals from his sentences for aggravated assault and possession of a controlled substance (marijuana) with intent to deliver. **AFFIRMED.**

Eric D. Tindal of Nidey, Erdahl, Tindal & Fisher, P.L.C., Williamsburg, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Tyron Rogers, Assistant County Attorney, for appellee.

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

POTTERFIELD, J.

Quanathan Ivery appeals from his consecutive sentences for aggravated assault and possession of a controlled substance (marijuana) with intent to deliver. He contends the district court failed to state adequate reasons on the record for running his sentences for the two crimes consecutively. We affirm, finding the court's rationale for the imposition of consecutive sentences is apparent from the overall sentencing plan.

I. Facts and Proceedings.

February 17, 2012, Ivery pleaded guilty to possession of marijuana with intent to deliver and to aggravated assault. April 2, 2012, Ivery was sentenced to a term not to exceed five years on the possession of marijuana charge and a term not to exceed two years on the assault charge. The judge ordered these terms to be served consecutively. In deciding this sentence, the court stated:

> Well, Mr. Ivery, in your case, as with any case, when the Court is asked to impose a sentence, the Court must try to create one that provides for your maximum rehabilitation but at the same time protects society from future criminal offenses by you or other individuals who would be in similar situations. . . .
>
> The record shows that since being placed on pretrial release [in the possession of marijuana] case you committed this new crime [of aggravated assault]. You have also been convicted of disorderly conduct in November of 2011; interference with official acts in November of 2011; plus, you had two or three traffic offenses in 2011. You also apparently were convicted of another assault in 2012. . . . [T]hose subsequent arrests are very important to me because it does demonstrate that you are not willing or able to follow the directions of pretrial release. . . . [B]ased on your behavior in the past year, you appear to be a person that's not going to comply with the rules. Based on that, I think that the recommendation of the State is appropriate, and it will be the order of the Court.

Ivery appeals, arguing the court did not adequately state its rationale for running his sentences consecutively.

II. Analysis.

"This court reviews sentences imposed in a criminal case for correction of errors at law. We will not reverse the decision of the district court absent an abuse of discretion or some defect in the sentencing procedure." *State v*. *Hennings*, 791 N.W.2d 828, 833 (Iowa 2010) (internal citations and quotation marks omitted). Iowa Rule of Criminal Procedure 2.23(3)(d) requires the court "state on the record its reason for selecting the particular sentence." "A statement may be sufficient, even if terse and succinct, so long as the brevity of the court's statement does not prevent review of the exercise of the trial court's sentencing discretion." *State v*. *Johnson*, 445 N.W.2d 337, 343 (Iowa 1989). The district court's statements may be sufficient where the decision to run sentences consecutively is apparent from the overall sentencing plan. *Hennings*, 791 N.W.2d at 838–39; *State v*. *Delaney*, 526 N.W.2d 170, 178 (Iowa Ct. App. 1994) ("The reasons [for consecutive sentences] 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."). "Thus, we look to all parts of the record to find the supporting reasons." *Delaney*, 526 N.W.2d at 178. (citation omitted).

In *Hennings*, our supreme court considered a sentencing proceeding similar to that which we are asked to examine here. 791 N.W.2d at 838. There, the sentencing court explained the sentencing options, summarized what the court had reviewed, explained the factors influencing its sentencing decision,

noted the purpose of sentencing is to protect society and rehabilitate, and concluded with the term of the sentence on each count and noted they would be served consecutively. *Id.* The court did not explicitly state its rationale for running the sentences consecutively. *Id.* Our supreme court found:

> This is not a situation where the court failed to give even a terse explanation of why it imposed consecutive, as opposed to concurrent, sentences. Nor is it a situation where the court did not state any reason why the two mandatory sentences were set to run consecutively or left the impression that the trial court may have mistakenly believed that consecutive sentences were mandatory. Instead, it is apparent to us that the district court ordered the defendant to serve his sentences consecutively as part of an overall sentencing plan.

Id. (internal citations and quotation marks omitted). Hennings was convicted of two charges stemming from the same course of action on the same date. Ivery, on the other hand, faced two convictions based on different and separate events. Contrary to the appellant's assertion, the court also provided further rationale than merely denying probation. *See Delaney*, 526 N.W.2d at 178 (finding a declaration that "[t]he court denies probation because it is unwarranted, and it would unduly lesson the seriousness of the offenses" insufficient rationale for the imposition of consecutive sentences). Here, the court noted the purpose of sentencing, Ivery's background and criminal history, his struggle to comply with authority, and the inappropriateness of probation. The court explicitly stated that the second crime was a separate criminal act committed while Ivery was under pre-trial supervision for the first crime and presumably on best behavior. To supplement its stated reasons, the court adopted the State's rationale for consecutive sentences. While the court provided no explicit tie-in between its sentencing plan as a whole and its decision to run the sentences consecutively,

we find the court's reasoning is apparent from the overall sentencing rationale. *Hennings*, 791 N.W.2d at 838.

AFFIRMED.