IN THE COURT OF APPEALS OF IOWA

No. 3-905 / 13-0076
Filed December 5, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LEWIS EDWARD MADISON JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Richard G. Blane II (trial) and Glenn E. Pille (sentencing), Judges.

Defendant appeals the court's sentencing order. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Melinda J. Nye, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, John P. Sarcone, County Attorney, and Steven Foritano, Assistant County Attorney, for appellee.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

BOWER, J.

Lewis Edward Madison Jr. appeals the district court's imposition of consecutive sentences. Finding no abuse of discretion, we affirm.

I. Background Facts and Proceedings.

Sixty-four-year-old Madison was friends with the father of thirteen-year-old M.H. In December 2010 and January 2011, after M.H.'s father drank to the point of passing out, Madison had sexual relations with M.H. on separate occasions several weeks apart.

The State charged Madison with four counts of sexual abuse in the third degree. *See* Iowa Code § 709.4(2)(b) (2011) ("The other person is . . . thirteen years of age,"). The State also alleged Madison would be subject to sentencing enhancements due to a prior conviction for a sexually predatory offense. Prior to trial, the State and Madison agreed that if he submitted to a bench trial on a stipulated record, the State would drop the fourth count and the sentencing enhancements. Pursuant to the agreement, a contested bench trial occurred in October 2012.

In November 2012 the court found Madison "did perform three separate sex acts on M.H." and found him guilty on all three counts. The court ordered a presentence investigation report (PSI). The completed PSI noted Madison's prior conviction for third-degree sexual abuse of "a thirteen-year-old female." The PSI recommended incarceration but did not address consecutive or concurrent sentences.

At the sentencing hearing, the State urged the court to impose consecutive sentences, and defense counsel argued the court should impose concurrent sentences. The court ordered the three sentences to "run consecutive to each other for a total term not to exceed thirty years." This appeal followed.

II. Scope and Standards of Review.

We review sentences for correction of errors at law. *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000). When, as here, a sentence does not fall outside statutory limits, we will overturn the sentence only "for an abuse of discretion or the consideration of inappropriate factors." *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). Sentencing decisions are cloaked with a strong presumption in their favor. *Grandberry*, 619 N.W.2d at 401. Our "task on appeal is not to second guess the decision made by the district court, but to determine if it was unreasonable or based on untenable grounds." *Formaro*, 638 N.W.2d at 725. A sentence will not be upset on appeal unless the defendant demonstrates there is no support for the decision in the evidence. *State v. Valin*, 724 N.W.2d 440, 445 (Iowa 2006).

III. Discussion.

Madison contends the district court abused its discretion in sentencing him to consecutive terms of incarceration. He asserts the court based its decision on one factor, the nature of the offenses. Madison also asserts this reliance "implies a fixed policy of consecutive sentences without exercising the court's discretion."

See State v. Morrison, 323 N.W.2d 254, 256 (Iowa 1982) ("Each decision must be made on an individual basis, and no single factor alone is determinative.").

We note a sentencing court "generally has discretion to impose concurrent or consecutive counts." *State v. Delaney*, 526 N.W.2d 170, 178 (Iowa Ct. App. 1994). Further, a trial court's explanation for selecting a particular sentence "does not need to be detailed" but must provide enough "to permit review of the trial court's discretionary action." *Id.* The court's reasons for imposing 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." *Id.*

Applying these principles to the reasons given by the district court during the sentencing hearing, we conclude there is no merit to Madison's challenges. At the sentencing hearing, the district court explained:

> The court has considered the presentence investigation report. I've had a chance to read that. I note the corrections made this morning. . . . I've considered the criminal history, the age of Mr. Madison, as argued, the testing that was done as reflected in the presentence investigation report regarding the risk of re-offending. I would note that the re-offending evaluations [are] but one factor the Court considers in determining what an appropriate sentence would be. Obviously in sentencing the Court considers protection to the public, rehabilitation opportunities for the defendant. The Court considers a number of options before imposing sentencing in this matter.
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> Most important to the Court, I would note that these are serious offenses that he has been convicted of. There are . . . three separate and distinct offenses, candidly, and that he has a prior conviction for a sex offense. And the Court agrees with the State that based upon the factors considered by the Court, and more importantly, those distinguishing factors, consecutive sentences should be imposed in this particular case.

After specifically imposing the sentences, the court once again stated it "considered the age of the defendant as well as the factors set forth in the presentence investigation report and . . . the defendant's prior criminal record, and that these were separate and distinct offenses."

We find no support for Madison's claims "the court's reliance on the seriousness of the offenses implies a fixed policy" or the court relied exclusively on one factor. Here, the court considered a variety of factors and found some factors to be more significant than others. *See Morrison*, 323 N.W.2d at 256 (noting the "seriousness of the offense is an important sentencing consideration," and the fact defendant was a judge was a significant "but not exclusive sentencing factor"). The court's decision to impose consecutive sentences was not "unreasonable or based on untenable grounds." *See Formaro*, 638 N.W.2d at 725. Accordingly, we affirm.

AFFIRMED.