IN THE COURT OF APPEALS OF IOWA

No. 3-109 / 12-0861
Filed March 27, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DAVID DWIGHT JACKSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Cynthia Moisan, District Associate Judge.

A defendant contends the district court erred in failing to include reasons for its sentence. **CONVICTION AFFIRMED, SENTENCE VACATED, AND REMANDED FOR RESENTENCING.**

Mark C. Smith, State Appellate Defender, and Rachel C. Regenold, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, John P. Sarcone, County Attorney, and Kevin Hathaway, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

VAITHESWARAN, P.J.

The State charged David Jackson with escape, in violation of Iowa Code section 719.4(3) (2011). The crime is a serious misdemeanor. Iowa Code § 719.4(3). Jackson entered a written plea of guilty. Among the rights he agreed to waive was his right to "have a court reporter make a verbatim record of these proceedings" and his right to speak to a judge about punishment and sentencing.

Jackson chose to be immediately sentenced and the district court completed a form "jail order" imposing a 120-day term of incarceration.[1] The form contained the following boilerplate reasons for the sentence: "The Court has determined that this sentence will provide reasonable protection of the public. Probation is denied because it is unwarranted."

The State concedes the quoted boilerplate language in the written order did not satisfy the court's requirement to make an on-the-record statement of its reasons for imposition of a particular sentence. *See* Iowa R. Crim. P. 2.23(3)(d) ("The court shall state on the record its reason for selecting the particular sentence."); *see also* Iowa Code § 901.5 (requiring court to consider certain sentencing options); *State v. Lumadue*, 622 N.W.2d 302, 304 (Iowa 2001) (holding the identical boilerplate in a pre-printed "prison order" did not satisfy the on-the-record requirement). There was also no on-the-record statement of reasons at a reported sentencing hearing because, as noted, Jackson waived his right to a reported hearing and his right to speak to a judge about sentencing. *See id.* (noting transcript of reported sentencing hearing was devoid of reasons).

[1] The court wrote that the term was to be served "consecutive to work release/parole case."

On appeal, Jackson frames the issue as follows:

> The district court must state the reasons for a sentence on the record. At an unreported sentencing hearing the district court sentenced Jackson to 120 days in jail using a boilerplate sentencing order without memorializing the reasons for the sentence. Did plea counsel render ineffective assistance by failing to request that the hearing be reported or that the reasons for the sentence be included on the order, to facilitate appellate review?

Jackson cites *State v. Mudra*, 532 N.W.2d 765 (Iowa 1995) for the proposition that he must raise his challenge to the sentencing order as an ineffective-assistance-of-counsel claim. Jackson is correct that *Mudra* shares similarities with his case.

Like Jackson, the defendant in *Mudra* entered a written plea of guilty, waived transcription of the proceedings, and agreed to immediate sentencing. 532 N.W.2d at 766. The district court's sentencing order included no reasons for the sentence. *Id.* On appeal, Mudra contended the court should have given him less jail time or granted him a deferred judgment. *Id.* The Iowa Supreme Court stated it could not "find clear abuse on the record Mudra . . . provided on appeal," because the record did not include the written plea agreement, transcript of proceedings, or any documentation of Mudra's criminal background. *Id.* at 766-67. Without these additional items, the court stated it was "unclear whether Mudra was eligible for a deferred judgment or sentence, or whether the district court provided adequate reasons during the proceedings or did not have to state reasons due to its acceptance of a plea agreement." *Id.* at 767. The court held it is "a defendant's obligation to provide [the] court with a record affirmatively

disclosing the error relied upon" and concluded that, "by voluntarily failing to provide such a record, Mudra has waived error on his claim." *Id.*

While the facts of *Mudra* bear a striking resemblance to the facts of this case, we are not convinced the opinion requires Jackson to raise his challenge to the district court's sentencing order under an ineffective-assistance-of-counsel rubric. The issue in *Mudra* was whether the district court abused its discretion in declining to impose a sentence requested by the defendant. *Id.* at 766. The court needed an additional record to evaluate that argument. *Id.* at 767. The issue here is whether the court fulfilled its obligation to provide on-the-record reasons for the sentence actually imposed. We do not need an additional record to evaluate that argument; we only need the sentencing order. We will review that sentencing order directly, rather than through the lens of ineffective assistance.

As noted, rule 2.23(3)(d) and Iowa Code section 901.5 require an on-the-record statement reflecting an exercise of discretion in selecting a sentence that provides for rehabilitation and protection. A court may fulfill its obligation to provide an on-the-record statement of reasons by orally stating the reasons for sentencing at a reported sentencing hearing or by placing the reasons in the written sentencing order. *State v. Alloway*, 707 N.W.2d 582, 584–85 (Iowa 2006), *overruled on other grounds by State v. Johnson*, 784 N.W.2d 192 (Iowa 2010). The court did neither. The court's violation of rule 2.23(3)(d) was error. *See State v. Luedtke*, 279 N.W.2d 7, 8 (Iowa 1979) (finding error in sentencing proceeding where district court did not state reasons on the record for sentence imposed); *see also Mudra*, 532 N.W.2d at 765 ("[T]he better practice for a district

court in situations where there is no transcription of the proceedings is to always state sufficient reasons in the sentencing order."); *State v. Jason*, 779 N.W.2d 66, 72 (Iowa Ct. App. 2009) (reviewing compliance with rule 2.23(3)(d) for correction of errors at law).

We vacate the sentencing order and remand for resentencing with an adequate statement of reasons.

CONVICTION AFFIRMED, SENTENCE VACATED, AND REMANDED FOR RESENTENCING.