IN THE COURT OF APPEALS OF IOWA

No. 7-476 / 06-1194
Filed October 12, 2007

STATE OF IOWA,
　　　Plaintiff-Appellee,

vs.

RAMALE ANTRON HUNT,
　　　Defendant-Appellant.
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　　　Appeal from the Iowa District Court for Black Hawk County, Kellyann M. Lekar,

Judge.

　　　Ramale Antron Hunt appeals the district court's determination that Iowa Code

section 901.8 (2003) requires consecutive sentencing for his convictions of flight to

avoid prosecution and intimidation with a dangerous weapon. **JUDGMENT AFFIRMED,**

SENTENCE VACATED AND REMANDED FOR RESENTENCING.

　　　Mark C. Smith, State Appellate Defender, and David Adams, Assistant Appellate

Defender, for appellant.

　　　Thomas J. Miller, Attorney General, and Jean Pettinger, Assistant Attorney

General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant County

Attorney, for appellee.

　　　Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

The State charged Ramale Hunt with intimidation with a dangerous weapon and another crime. While the charges were pending, Hunt left Iowa. The State proceeded to charge Hunt with flight to avoid prosecution. Iowa Code §§ 719.4(4) and 901.8 (2003).[1] Hunt was eventually tracked down and returned to Iowa, where he was found guilty of the intimidation charge and the flight to avoid prosecution charge.

Sentencing for both crimes was scheduled for the same day, at different times. Prior to the sentencing hearings, the district court addressed the applicability of Iowa Code section 901.8, which states in pertinent part:

> If a person is sentenced for escape under section 719.4 or for a crime committed while confined in a detention facility or penal institution, the sentencing judge shall order the sentence to begin at the expiration of any existing sentence.

First, the court decided the crime of flight to avoid prosecution is an "escape" within the meaning of section 901.8. Second, the court applied the phrase "existing sentence" in section 901.8. The court concluded that, because Hunt's sentencing hearing on the intimidation charge was scheduled for 3:00 p.m. and the sentencing hearing on the flight from prosecution charge was set for 4:00 p.m. on the same day, sentence on the underlying criminal charge would be "existing" at the time of sentencing on the flight from prosecution charge. Based on this analysis, the court ruled that Hunt's "sentence in this matter will fall within the mandatory consecutive sentence requirements of section 901.8." Consistent with this ruling, the court subsequently ordered the flight from prosecution sentence and intimidation sentence to be served consecutively. *See State v. Jones*, 298 N.W.2d 296, 298 (Iowa 1980) ("A consecutive sentence is added to

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[1] The State also charged Hunt with two counts of failure to appear that are not at issue on appeal.

defendant's present sentence, whereas a concurrent sentence is served at the same time as an existing sentence." (quoting *State v. Smith*, 291 N.W.2d 25, 28-29 (Iowa 1980))).

On appeal, Hunt argues that (1) Iowa Code section 719.4(4) is not included in the mandatory consecutive sentencing provision of section 901.8, (2) there are compelling policy reasons to exempt the flight from prosecution offense from the mandatory consecutive sentencing of section 901.8, and (3) the consecutive sentence contemplated in section 901.8 is meant to be added to a sentence in place when the escape offense is committed. We find it unnecessary to address the first two arguments, as Hunt's third argument is dispositive.

With respect to this argument, the specific question is whether the words "existing sentence" refer to a sentence existing when Hunt *committed* his escape crime, or the sentence existing when he was *later sentenced* for his escape crime. The Iowa Supreme Court has answered this question. *See State v. Smith*, 300 N.W.2d 90, 93 (Iowa 1981); *State v. Jones*, 299 N.W.2d 679, 682 (Iowa 1980); *cf. Bernklau v. Bennett*, 162 N.W.2d 432, 436 (Iowa 1968) (interpreting predecessor statute).

In *Smith*, the Iowa Supreme Court stated, "by 'existing sentence,' the legislature meant any sentence the inmate was under *at the time he committed an escape*." *Smith*, 300 N.W.2d at 93 (citing *State v. Jones*, 299 N.W.2d 679, 682 (Iowa 1980)) (emphasis added). Applying this reading of Iowa Code section 901.8 to the facts, the court continued, "[b]ecause defendant had not been sentenced for theft at the time of his escape, the mandatory consecutive sentence provision of section 901.8 was inapplicable." *Id.* Similarly, in *Jones*, the supreme court held that, for mandatory

consecutive sentencing to apply, a sentence must exist at the time an inmate escapes or commits a crime while confined. *Jones*, 299 N.W.2d at 682. *Cf. Bernklau,* 162 N.W.2d at 436 (interpreting predecessor statute "to refer to the previous sentence at the time of escape, rather than at the time of sentencing"). Based on this precedent, we conclude a mandatory consecutive sentence under Iowa Code section 901.8 was impermissible under the circumstances of this case.[2]

We vacate the sentence for flight from prosecution and remand for resentencing. *State v. Lee*, 561 N.W.2d 353, 354 (Iowa 1997) ("Where a court fails to exercise the discretion granted it by law because it erroneously believes it has no discretion, a remand for resentencing is required.").

JUDGMENT AFFIRMED, SENTENCE VACATED AND REMANDED FOR RESENTENCING.

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[2] As Hunt correctly concedes, the precedent does not preclude the district court from imposing consecutive sentences based on an exercise of sentencing discretion. Iowa Code § 901.8 ("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."); *Smith*, 300 N.W.2d at 93 (noting although the district court's imposition of a mandatory consecutive sentence was in error, it had discretionary authority to order the new sentences to be consecutive); *Bernklau*, 162 N.W.2d at 436 ("This is not to say the trial judge could not have ordered all three sentences to run consecutively. He obviously could so order but he was not compelled to do so by virtue of the concluding clause of section 745.1.").