IN THE COURT OF APPEALS OF IOWA

No. 9-912 / 09-0148
Filed December 17, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

EDWARD DEWAYNE NEWTON,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

Defendant appeals the sentences imposed upon his conviction of four counts of delivery of controlled substances. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Martha J. Lucey, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, John P. Sarcone, County Attorney, and Daniel C. Voogt, Assistant County Attorney, for appellee.

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

MANSFIELD, J.

Edward Newton appeals from the judgment and sentence entered following his guilty pleas to one count of delivery of controlled substance (cocaine salt) in violation of Iowa Code section 124.401(1)(c)(2)(b) (2007), and three counts of delivery of controlled substance (cocaine base) in violation of section 124.401(1)(c)(3). Newton contends the district court abused its discretion by failing to give specific reasons for imposing consecutive sentences. After reviewing the record, we affirm the sentence of the district court.

I. FACTS AND PROCEDURAL HISTORY.

According to the minutes of testimony, on four separate occasions, Newton sold or provided crack cocaine or cocaine salt to an undercover police officer and a cooperating individual in Des Moines between July 31, 2008, and August 13, 2008. At the time the offenses were committed, Newton was on parole for a forgery offense he committed in 2003.

On September 26, 2008, the State charged Newton with four counts of delivery of controlled substances. Each charge is a class "C" felony and carries a punishment of no more than ten years incarceration. *See* Iowa Code §§ 124.401(1)(c), 902.9(4).

On November 26, 2008, Newton pled guilty to all four counts. At the plea hearing, the prosecutor indicated that if Newton agreed to serve two of the four counts consecutively, he would support that, but if Newton argued for a lesser sentence, the State would be free to argue for any applicable sentence, up to the maximum allowed under the law. Newton proceeded to plead guilty.

Following the plea, Newton filed pro se motions to discharge his attorney and to revoke his guilty pleas. New counsel was appointed, and on January 9, 2009, the district court denied Newton's motion to withdraw his guilty pleas. The district court then proceeded to sentencing.

At sentencing, the State requested the maximum punishment be imposed, i.e. four consecutive ten-year sentences. Newton's counsel agreed that it was "reasonable to recommend incarceration," but argued that the four sentences should run concurrently. He specifically stated that his client's "recommendation or his request to me was to ask the court to impose four ten-year sentences and to run them concurrently, and that's what he's asked me to present to the court and I shall do so."

In making its sentencing decision, the district court stated:

> I read the [presentence investigation report]. I am familiar with the defendant's age, his prior record of convictions and deferments, his employment and family circumstances, the nature of the offenses that were committed here, [and] harm to the victim.
>
> As far as I know, there was no weapon of force involved in any of these offenses. The defendant's financial circumstances, the defendant's need for rehabilitation and potential for that—and, in particular, what I would cite with regard to that is that Mr. Newton has had two what I regard as extraordinary opportunities for treatment. One in the in-jail treatment program and the second with the drug court program—the necessity for protecting the community from further offenses by the defendant and others and the other factors that are set forth in the presentence investigation report.

The district court commented on Newton's unsuccessful attempt to withdraw his guilty plea, stating among other things that he would not hold that against Newton for sentencing purposes. Then, the district court pronounced Newton's sentence to be ten years in prison on each of the four counts, with two of the counts to be served consecutively, for a total of twenty years. The court further

stated that the sentences would be consecutive to his forgery sentence. As the court explained, Newton was on parole for forgery when he committed the cocaine distribution offenses, so his parole is revoked as a matter of law. *See* Iowa Code § 908.10. The court added that there is a statutory presumption the new sentences run consecutive to the term imposed for the parole violation, *see id.*, and "there's certainly no reason here that it should not be consecutive."

Newton now appeals the sentences imposed by the court. His sole basis for appeal is that the district court failed to give reasons for imposing consecutive sentences.

II. ANALYSIS.

Where a challenged sentence does not fall outside the statutory limits, we review the trial court's decision for abuse of discretion. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). "An abuse of discretion is found only when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Id.*

Under Iowa Rule of Criminal Procedure 2.23(3)(*d*), "[t]he court shall state on the record its reason for selecting the particular sentence." The district court must also give its reasons for imposing consecutive, rather than concurrent, sentences. *State v. Uthe*, 542 N.W.2d 810, 816 (Iowa 1996). "Although the reasons need not be detailed, at least a cursory explanation must be provided to allow appellate review of the trial court's discretionary action." *State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000).

There is no question that the district court gave reasons for the sentence it imposed. These included the age of the defendant, the defendant's prior record

of convictions and deferments, employment and family circumstances, and the nature of the offense committed. In addition to these factors, the district court cited two "extraordinary opportunities" for drug treatment and Newton's lack of success in those prior rehabilitation efforts. Newton argues, however, that because the district court did not specifically state on the record something like, "These are the reasons why I am making two of the sentences run consecutively," the sentencing failed to satisfy the requirements of rule 2.23(3)(*d*). We disagree.

Based on the sentencing colloquy, it is apparent to us and would have been apparent to the parties that the foregoing *were* the reasons for the consecutive sentences on two counts. The fighting issue at the time of sentencing was the extent to which the sentences would run concurrently or consecutively. Newton's counsel asked for all sentences to be concurrent; the State asked for all sentences to be consecutive. The district court set forth the factors it deemed relevant, then ordered two of the sentences to run consecutively, and the others concurrently. This is enough.

In short, this is a case where the district court gave reasons, and it was "reasonably clear" they were the reasons for the consecutive sentences. *See State v. Carberry*, 501 N.W.2d 473, 477-78 (Iowa 1993) (holding that even an "extremely terse" statement of reasons, which did not specifically refer to the district court's decision to impose consecutive sentences, was sufficient, where it was "reasonably clear" these were the reasons for consecutive sentences); *see also State v. Keopasaeuth*, 645 N.W.2d 637, 641-42 (Iowa 2002) (where the State argued for consecutive sentences, and reasons for the sentence "were

articulated," the reasons were sufficient, even though the judge did not specifically state they were reasons for making the sentences consecutive).

After consideration of the record, we conclude the district court provided sufficient reasons for imposing consecutive sentences. Accordingly, we affirm.

AFFIRMED.