

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 22-1367
Cerro Gordo County No. FECR031249

STATE OF IOWA,
Plaintiff-Appellee,

v.

SCOTT RANDOLPH LUKE,
Defendant-Appellant.

APPEAL FROM
THE DISTRICT COURT OF CERRO GORDO COUNTY
THE HONORABLE
DISTRICT COURT JUDGER KAREN KAUFMAN SALIC

FINAL BRIEF FOR APPELLANT

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CERTIFICATE OF SERVICE

On the 15th day of May, 2023, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant Scott Randolph Luke by placing one copy thereof in the United States mail, proper postage attached, addressed to:

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. THERE IS GOOD CAUSE TO CONSIDER THIS APPEAL

Iowa Code § 814.6(1)(2019)
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 "Iowa Code § 814.7(2019)
Severson v. Peterson, 1985, 364 N.W.2d 212 (Iowa 1985)
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State v. Headley, 926 N.W.2d 545, 550 (Iowa 2019)
State v. Adcock, No. 01-1638, 2002 WL 31641649, at *2 (Iowa Ct. App. Nov. 25, 2002)

ROUTING STATEMENT

Pursuant to Iowa Rule of Appellate Procedure 6.1101(3), it is appropriate for this case to be transferred to the Court of Appeals.

STATEMENT OF THE CASE

NATURE OF THE CASE, THE PROCEEDINGS, AND DISPOSITION OF THE CASE IN DISTRICT COURT

This is an appeal by Defendant-Appellant Scott Randolph Luke from his conviction, judgement, and sentence following his plea to Domestic Abuse Assault in violation of Iowa Code Section 708.2A(3)(b).

On April 6, 2022, a criminal complaint was filed charging Luke with Domestic Abuse Assault Impeding Air/Blood Flow Causing Bodily Injury in violation of Iowa Code Section 708.2A(5). (Criminal Complaint; App. 16). On April 14, 2023, a trial information was filed charging him with the same. (Trial Information; App. 18).

At the time, Luke was on probation for a previous conviction in Cerro Gordo County case number FECR030393. (Order of Disposition FECR030393; App. 12).

A plea agreement was reached and on July 18, 2022, Luke plead guilty to Domestic Abuse Assault in violation of Iowa Code Section 708.2A(3)(b). (Guilty Plea; App. 21). The state likewise filed for the charge to be appropriately amended. (Order to Amend; App. 28). Sentencing was scheduled, and on August 15, 2022, and a probation revocation was likewise filed for the same time and date for his pending probation matter. Pursuant to the plea agreement, the parties were free to argue for any legal sentence. The defense requested a deferred judgment and that any sentence imposed be run concurrent to the probation matter. (Guilty Plea; App. 21).

Ultimately, Luke was sentenced to a term of incarceration not to exceed two years. This was set to run consecutively to the sentence imposed in his probation case: case no. FECR030393. (Order of Disposition FECR031249; App. 30). Luke's probation was revoked in that matter and the underlying sentences were imposed. Both underlying counts were set to run consecutively to each other and to FECR031249.

On August 16, 2022, Luke filed a timely notice of appeal. (Notice of Appeal; App. 33).

STATEMENT OF THE FACTS

The events giving rise to the underlying criminal proceeding in Cerro Gordo County case number FECR031249. A preliminary complaint was filed on April 6, 2022, for an allegation of domestic abuse via strangulation. (Criminal Complaint; App. 16). At the time, Luke was on probation for a previous conviction in Cerro Gordo County case number FECR030393. (Order of Disposition FECR030393; App. 12).

A plea agreement was eventually reached. Pursuant to this agreement, Luke entered a plea to the amended charge of Domestic Abuse Assault in violation of Iowa Code Section 708.2A(3)(b). (Guilty Plea; App. 21). The factual basis for Luke's plea was that he "[placed] her in fear of immediate physical contact which would be insulting or offensive, with the apparent ability to execute the act." (Guilty Plea; App. 21). While this is a simple misdemeanor-level admission, the charge was enhanced to an Aggravated Misdemeanor due to his prior conviction of Domestic Abuse Assault as an Aggravated Misdemeanor.

Pursuant to the plea agreement, the parties agreed to an open plea and allowed sentencing recommendations to be made. A hearing was set for August 15, 2022, to include both his sentencing on the pending charge and disposition of the probation violation. The State argued for a complete revocation of his probation and the imposition of the maximum, 2-year sentence on the new charge. (Sent. Trans. P. 10; ln. 1-8; App. 8).

The Defense argued for the Court to find Luke in contempt for his probation violation and requested credit time served. Likewise, they argued for credit for time served on the pending charge, and if not, that any longer sentence be suspended. (Sent. Trans. P. 10-11; ln. 1n. 20-4; App. 8-9).

Additionally, counsel for the defense included a request that any sentence on the new charge be run concurrently to any sentence in his probation case. (Sent. Trans. P. 12; ln. 16-18; App. 10).

The Court ultimately sided with the state. The maximum sentence was imposed on his pending charge and the original sentence was fully imposed on his probation case. All were set to be run consecutively to each other. (Order of Disposition FECR031249; App. 30).

Any additional relevant facts will be discussed below.

I. THERE IS GOOD CAUSE TO CONSIDER THIS APPEAL

On July 1, 2019 our legislature implemented several new changes to the Iowa Code. Specifically, Iowa Code § 814.6(1) was amended to disallow appeals from final judgments when a defendant plead guilty to a crime other than a class “A” felony. There was an exception to this rule change, “where the defendant establishes good cause.” Iowa Code § 814.6(1)(2019). Good cause was not defined in the statute.

““[W]hen the legislature has not defined a term, we look to the common meaning of that term in interpreting the statute.” *State v. Tesch*, 704 N.W.2d 440, 451 (Iowa 2005). A dictionary can be a reliable source for the common meaning of a word or phrase. *Id.* *Black's Law Dictionary* defines “good cause” to mean “[a] legally sufficient reason.” *Good Cause, Black's Law Dictionary* (11th ed. 2019). We adopt that definition of good cause for section 814.6.” *State v. Damme*, 944 N.W.2d 98, 104 (Iowa 2020).

“We hold that good cause exists to appeal from a conviction following a guilty plea when the defendant challenges his or her sentence rather than the guilty plea. Damme received a discretionary sentence that was neither mandatory nor agreed to as part of her plea bargain, and she is appealing that sentence and asking for resentencing without challenging her guilty plea or conviction. A sentencing error invariably arises after the court has accepted

the guilty plea. This timing provides a legally sufficient reason to appeal notwithstanding the guilty plea.” *State v. Damme*, 944 N.W.2d 98, 105 (Iowa 2020).

On July 1, 2019, the Code was changed to bar ineffective assistance of counsel claims in direct appeal from a criminal proceeding. Iowa Code § 814.7(2019).

“Under rule of appellate procedure providing that “if an application for discretionary review is granted, further proceedings shall be had pursuant to the rules of appellate procedure to the full extent not inconsistent with statute,” an appeal on discretionary review will be handled like any other appeal.” *Severson v. Peterson*, 1985, 364 N.W.2d 212 (Iowa 1985).

“We review constitutional challenges to statutes de novo.” *State v. Sluyter*, 763 N.W.2d 575, 579 (Iowa 2009).

[W]e must remember that statutes are cloaked with a presumption of constitutionality. The challenger bears a heavy burden, because it must prove the unconstitutionality beyond a reasonable doubt. Moreover, “the challenger must refute every reasonable basis upon which the statute could be found to be constitutional.” Furthermore, if the statute is capable of being construed in more than one manner, one of which is constitutional, we must

adopt that construction. *State v. Seering*, 701 N.W.2d 655, 661 (Iowa 2005) (quoting *State v. Hernandez-Lopez*, 639 N.W.2d 226, 233 (Iowa 2002)), *superseded by statute on other grounds*, 2009 Iowa Acts ch. 119, § 3 (codified at Iowa Code § 692A.103 (Supp. 2009)), *as recognized in In re T.H.*, 913 N.W.2d 578, 587–88 (Iowa 2018).” *State v. Doe*, 927 N.W.2d 656, 660 (Iowa), *cert. denied*, 140 S. Ct. 561, 205 L. Ed. 2d 356 (2019).

Before the amendment to Iowa Code § 814.6(1), Luke had an absolute right to an appeal of a guilty plea. Luke plead and was sentenced after the recent amendment. Good cause exists in this case as Luke was sentenced to a period of incarceration, all consecutive, as opposed to credit for time served, deferred judgment and concurrent as requested by counsel.

Luke received a discretionary sentence that was neither mandatory nor agreed to as part of his plea bargain, and he is appealing that sentence and asking for resentencing without challenging his guilty plea or conviction, this has established good cause to proceed.

II. DID THE SENTENCING COURT ABUSE ITS DISCRETION WHEN ORDERING CONSECUTIVE SENTENCES AND PRISON?

Standard of Review and Preservation of Error:

The Court reviews sentences imposed in a criminal case for “correction of errors at law.” *State v. Damme*, 944 N.W.2d 98, 104 (Iowa 2020).

“If the sentence imposed is within the statutory limits, as it is here, we review for an abuse of discretion.” *State v. Majors*, 940 N.W.2d 372, 385–86 (Iowa 2020).

A defendant need not object to preserve error when the district court considers an improper factor in determining his sentence. *State v. Boldon*, 954 N.W.2d 62, 70 (Iowa 2021) (citing *State v. Young*, 292 N.W.2d 432, 435 (Iowa 1980)).

Error was preserved in this case when Defense Counsel advocated for a lesser sentence.

Law:

“A discretionary sentencing ruling, similarly, may be [an abuse of discretion] if a sentencing court fails to consider a relevant factor that should have received significant weight, gives significant weight to an improper or irrelevant factor, or considers only appropriate factors but nevertheless commits a clear error of judgment by arriving at a sentence that lies outside the limited range of choice dictated by the facts of the case. *Id.* at 138

(alteration in original) (quoting *People v. Hyatt*, 316 Mich. App. 368, 891 N.W.2d 549, 578 (2016), *judgment affirmed in part and reversed in part by People v. Skinner*, 502 Mich. 89, 917 N.W.2d 292, 295 (2018)). “Sentencing decisions of the 386 district court are cloaked with a strong presumption in their favor.” *State v. Crooks*, 911 N.W.2d 153, 171 (Iowa 2018); *see also State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002).” *State v. Majors*, 940 N.W.2d 372, 385–86 (Iowa 2020).

“We reiterate that our role on review is for abuse of discretion. An abuse of discretion may exist if the sentencing court fails to consider a factor, gives significant weight to an improper factor, or arrives at a conclusion that is against the facts. *Id.* at 138. But if the court follows our outlined sentencing procedure by conducting an individualized hearing, applies the *Miller/Lyle/Roby* factors, and imposes a sentence authorized by statute and supported by the evidence, then we affirm the sentence. *Goodwin v. Iowa Dist. Ct.*, 936 N.W.2d 634, 637 (Iowa 2019); *see also Seats*, 865 N.W.2d at 552–53 (explaining our review for abuse of discretion and emphasizing the discretionary nature of judges). As we stated in *Formaro*, Judicial discretion imparts the power to act within legal parameters according to the dictates of a judge's own conscience, uncontrolled by the

judgment of others. It is essential to judging because judicial decisions frequently are not colored in black and white. Instead, they deal in differing shades of gray, and discretion is needed to give the necessary latitude to the decision-making process. This inherent latitude in the process properly limits our review. Thus, 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.” *Id.*

“District courts are required to “state on the record its reason for selecting the particular sentence.” Iowa R. Crim. P. 2.23(3)(d). “[T]his requirement ensures defendants are well aware of the consequences of their criminal actions” and gives “our appellate courts the opportunity to review the discretion of the sentencing court.” *State v. Hill*, 878 N.W.2d 269, 273 (Iowa 2016) (quoting *State v. Thompson*, 856 N.W.2d 915, 919 (Iowa 2014)). However, district courts are not obligated “to give its reasons for rejecting particular sentencing options.” *State v. Russian*, 441 N.W.2d 374, 375 (Iowa 1989); *see also Thomas*, 547 N.W.2d at 226 (“The fact the district court did not specifically mention the absence of mitigating circumstances is inconsequential since this court has recognized that the district court is not required to note them.”). “The court need only explain its reasons for

selecting the sentence imposed.” *Russian*, 441 N.W.2d at 375.” *State v. Wilbourn*, No. 20-0257, 2022 WL 1434531 (Iowa May 6, 2022).

“The court is to [w]eigh and consider all pertinent matters in determining proper sentence, including the nature of the offense, the attending circumstances, defendant's age, character and propensities and chances of his reform. The courts owe a duty to the public as much as to defendant in determining a proper sentence. The punishment should fit both the crime and the individual. *Id.* (alteration in original) (quoting *State v. August*, 589 N.W.2d 740, 744 (Iowa 1999)); accord Iowa Code § 901.5 (providing that an appropriate sentence “will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others”).” *State v. Hayden*, No. 22-0644, 2022 WL 16985227, at *4–5 (Iowa Ct. App. Nov. 17, 2022).

“When, as here, the court imposes a sentence within the statutory limits, it “is cloaked with a strong presumption in its favor, and will only be overturned for an abuse of discretion or the consideration of inappropriate matters.” *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). “A district court abuses its discretion when it exercises its discretion on grounds clearly

untenable or to an extent clearly unreasonable, which occurs when the district court decision is not supported by substantial evidence or when it is based on an erroneous application of the law.” *State v. Wicker*, 910 N.W.2d 554, 564 (Iowa 2018) (cleaned up).” *State v. Hill*, 964 N.W.2d 24 (Iowa Ct. App. 2021).

“The district court's sentence should “provide [the] maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.” Iowa Code § 901.5. Moreover, “the district court is to weigh all pertinent matters in determining a proper sentence, including the nature of the offense, the attending circumstances, the defendant's age, character, and propensities or chances for reform.” *State v. Johnson*, 513 N.W.2d 717, 719 (Iowa 1994).

The district court must then determine the appropriate sentence based on individual factors of each case, though no single factor alone is determinative. *See Id.*

Hill contends the court “failed to give a rational basis for the extreme sentence imposed upon [her] given the record and evidence presented at the time of sentencing.” In arguing against imprisonment, Hill notes her offenses were nonviolent, her family relied on her, and her pre-

existing health conditions put her at higher “risk of danger to being exposed to Covid-19” in the prison population. “A sentencing court is to consider any mitigating circumstances relating to a defendant.” *State v. Withan*, 583 N.W.2d 677, 678 (Iowa 1998). But the court is not “required to specifically acknowledge each such claim of mitigation urged by a defendant.” *State v. Boltz*, 542 N.W.2d 9, 11 (Iowa Ct. App. 1995).” *State v. Hill*, 964 N.W.2d 24 (Iowa Ct. App. 2021).

““In applying the abuse of discretion standard to sentencing decisions, it is important to consider the societal goals of sentencing criminal offenders, which focus on rehabilitation of the offender and the protection of the community from further offenses.” *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). Sentencing courts in Iowa generally have broad discretion to rely on information presented to them at sentencing. *See State v. Pappas*, 337 N.W.2d 490, 494 (Iowa 1983) (“[W]hatever Iowa statutes leave to the courts in matters of sentencing should be the responsibility of the sentencing judge.”); *State v. Gartin*, 271 N.W.2d 902, 910 (Iowa 1978) (“[T]he decisions of the trial court are cloaked with ‘a strong presumption in [their] favor,’ and ‘[u]ntil the contrary appears, the presumption is that the discretion of the [trial] court was rightfully exercised.’ ” (Alterations in

original.) (quoting Kermit L. Dunahoo, *The Scope of Judicial Discretion in the Iowa Criminal Trial Process*, 58 Iowa L. Rev. 1023, 1024 (1973)); *State v. Delano*, 161 N.W.2d 66, 71 (Iowa 1968) (holding the sentencing court may rely on any information to which the defendant did not object). A court “should weigh and consider all pertinent matters in determining proper sentence, including the nature of the offense, the attending circumstances, defendant’s age, character and propensities[,] and chances of his reform.” *State v. Cupples*, 260 Iowa 1192, 1197, 152 N.W.2d 277, 280 (1967).” *State v. Headley*, 926 N.W.2d 545, 550 (Iowa 2019).

Analysis:

A plea agreement was reached in this matter and on July 18, 2022, Luke entered a plea to the lesser charge of Count I: Domestic abuse Assault, in violation of Iowa Code Section 708.2A(30(b) [sic]. (Guilty Plea; App.).

Sentencing was scheduled and on August 15, 2022, Luke was sentenced to a term of incarceration not to exceed two years, concurrent to FECR030393 as opposed to a concurrent sentence advocated by his counsel. (Order of Disposition; App. 30).

Luke spent more than four months incarcerated when he was arrested on April 6, 2022 and was sentenced on August 15, 2022. This is more than

130 days in custody in this matter and a significant punishment to Luke. The Court failed to consider this extensive pretrial incarceration in this case when determining the appropriate punishment.

Defendant/Appellants actions should not be condoned, but based on his prior mental health history (bipolar) and not being properly medicated at the time of the instant offense, his age (34), education level (associates and two-year degree in welding), and criminal history (this case and the probation matter), and the mitigating factor of losing a child recently, it did not warrant further imprisonment. The Court was also made aware that other than the instant offense, Luke had been successful on probation – attending IDAP, paying fines, maintaining employment and no allegations of illegal substances.

There were other, less invasive options for the court. There were halfway houses, work release programs, and intensive probation, that would have provided Defendant would oversight and accountability. It does not appear the court considered any of these less restrictive options before ordering prison or considered the amount of pretrial incarceration. The Defense also indicated to the Court that Luke was presently involved in a CINA case which would place additional restrictions and oversight on Luke.

The time in custody and while the case was pending would have taught him a valuable lesson about cause and effect and suffering the consequences of your actions. It was not necessary or warranted to sentence Luke to prison as well. (Sent. Trans. Pg. 4, 11, & 12; App. 7, 9, & 10).

Further, the Court did not articulate any reasons for running the charge consecutive to his probation matter.

“Iowa Rule of Criminal Procedure 2.23(3)(d) requires a trial court to state on the record its reasons for selecting a particular sentence. *See Oliver*, 588 N.W.2d at 414. 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). A trial court must also give reasons for its decision to impose consecutive sentences. *Id.*” *State v. Adcock*, No. 01-1638, 2002 WL 31641649, at *2 (Iowa Ct. App. Nov. 25, 2002).

The trial court made the following statements in sentencing defendant:

“With respect to the probation revocation matter, the defendant's probation on each count is revoked. Those were previously ordered to be served consecutively and the Court finds they shall continue to be served consecutively to each other and also to FECR031249.” (Sent. Trans. Pg 18: L1 10-15; App. 11).

As found in *Adcock*:

“The court did not specifically link any of its reasoning to its imposition of the consecutive sentences. The court found, in the interest of the public generally, and due to the seriousness of defendant's crime, that probation was denied. But the court offered no reasoning for the consecutive sentence, nor did it indicate that the prior reasoning applied to the consecutive sentence. Further, the court did not offer any subsequent reasoning following its imposition of the consecutive sentence indicating why the consecutive sentence was appropriate. We conclude the court failed to provide reasoning for the consecutive sentence and that this was error. We therefore vacate the sentence for the July 15 offense and remand for resentencing. *See id.*” *State v. Adcock*, No. 01-1638, 2002 WL 31641649 (Iowa Ct. App. Nov. 25, 2002).

The Court in this case followed the very same procedure as the Court found violated in *Adcock*. The Court found that Luke lacked coping mechanisms, and that he needed to make changes to his life so he did not continue to repeat what was happening, thus it felt incarceration was proper. The Court indicated that the probation matter was already set to run consecutive, so it went along with that, but provided no reason for this sentence to be consecutive to the probation matter. In fact, the Court

specifically references that it is not suspending the charges due to the prior reasons mention on the record. The trial court must put its reasons on the record for the consecutive sentence and we simply do not have that in this case. Once the consecutive sentences are mentioned at the end of the proceeding, the court does not provide any justification for the imposition of a consecutive sentence.

The judgment in this case should be overturned.

CONCLUSION

For the above-mentioned reasons, Defendant/Appellant Scott Luke respectfully requests the appellate court find Defendant's criminal conviction was in error and that his judgment be vacated.

REQUEST FOR NON-ORAL SUBMISSION

Appellant Scott Luke does not request that his counsel be heard orally by the court regarding all matters addressed herein.

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CERTIFICATE OF COST

I certify that the cost of printing this brief was \$0.00.

/s/ Karmen Anderson

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because the brief contains 3,564 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word in Times New Roman 14 pt. font.

/s/ Karmen Anderson
Karmen R. Anderson

5/15/2023
Date