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IN THE SUPREME COURT OF IOWA

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

STATE OF IOWA,
Appellee,

v.

SCOTT RANDOLPH LUKE,
Appellant.

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

APPLICATION FOR FURTHER REVIEW
Iowa Court of Appeals Decision: August 30, 2023

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QUESTION PRESENTED FOR FURTHER REVIEW

Whether or not the Iowa Court of Appeals erred in finding that the District Court did not abuse its discretion when it disregarded Luke's previous time served and imposing consecutive sentences without justification contained in the record.

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STATEMENT SUPPORTING FURTHER REVIEW

This case warrants further review for the following reasons:

The Iowa Court of Appeals found in this case that the District Court did not abuse its discretion when imposing prison time through consecutive sentences. As Appellant has a significant liberty interest in the outcome of this case, this matter warrants review by this tribunal. The Court of Appeals opinion is contradictory to existing caselaw, including, *State v. Hill,* N.W.2d 269, 274 (Iowa 2016), when it found that boilerplate language in the sentencing order satisfied its requirements of the courts necessity to explain consecutive sentences.

STATEMENT OF THE CASE

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

This is an appeal by 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.

ARGUMENT

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

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 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, (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:

The District Court's recorded reasoning for Luke's severe sentence is insufficient at multiple stages throughout his sentencing. Regarding the sentence itself, the serious consideration of his previous time incarcerated was not appropriately given. The court stated that there had been "minimal" progress towards rehabilitation, yet contradicts this by later listing out the measures he has successfully taken in his reformation: steady employment, compliance with his probation officer, participation in IDAP, coupled with no substance abuse issues.

This is important to note when considering the fact that the offense in question arose from the aftermath of the recent and sudden loss of Luke's child. Given his noted history with bipolar disorder, the severe mental

upheaval that would entail constitutes an exceptional situation the likes of which resources like IDAP are inadequate to deal with.

Sentencing Luke to prison following more than four months of previous incarceration served no purpose to rehabilitate, as it would be more effective to pursue less invasive options such as, halfway houses, work release programs, and intensive probation. Furthermore, Luke's involvement in a pending Child in Need of Assistance action would have further satisfied concerns of oversight while providing even more resources for his reformation. Continued incarceration then can only be regarded as a punitive measure. Given that the Court did not make a statement confirming their consideration of Luke's already extensive incarceration, their stated goals and harsh sentence do not follow logically.

However, the larger injustice of this incarceration stems from the fact that the new sentence was run consecutive to the sentence imposed with his probation revocation. While it was within the court's discretion to do so, no explanation was given for why such a severe measure was appropriate. This lapse in procedure has been explicitly prohibited by Iowa R. Crim. 22(3)(d), which establishes the district court's requirement to state on the record its reasoning for selecting a particular sentence. *State v. Jacobs* took this further

and held that the court must provide its specific reasons for why it ordered sentences run consecutive even when the rationale for each sentence has been explained separately. *Id.* 607 N.W.2d 679, 690 (Iowa 2000). This closely reflects Luke's situation as no explanation was given to him at the hearing.

The Court of Appeals has instead pointed to the written order which supposedly includes further explanation:

> IT IS THEREFORE ORDERED that taking into account defendant's age, attitude, criminal history, and employment, financial and family circumstances, as well as the nature of the offense, including whether a weapon or force was used in the commission of the offense, the recommendations of the parties, and other matters reflected in the court file and record, for the protection of society and rehabilitation of defendant:
>
> . . . **For the reasons set forth above and/or stated on the record, the sentence shall be served CONSECUTIVELY to the sentence(s) imposed in [the probation revocation matter].**

(Order of Disposition; App. 30). As quoted in the opinion, *State v. Thompson* does allow for a written explanation to satisfy the requirement of Iowa R. Crim. 2.23(3)(d). However, that is only if the oral explanation is itself sufficient. The note above may be more than what was provided orally, but this language does nothing to explain the court's actual and case-specific

reasons. Instead, it is merely boilerplate language included at nearly every sentencing.

State v. Cooper (which was quoted in *Thompson*) recognized how template language ("defendant's background" and "circumstances of the offense") is insufficient to establish the court's reason and found the need for a "rationale relating to *this* offense, and *this* defendant's background. *Id.* 403 N.W.2d 802 (Iowa Ct. App. 1987). *State v. Lumadue* built on this concept and called out boilerplate language for being too vague and generalized to make a record meaningful. *Id.* 622 N.W.2d 302, 305 (Iowa 2001).

There have been limiting standards to this case that allow for very terse language. *See State. v. Hopkins*, 860 N.W.2d 550, 554-55 (Iowa 2015); and *State v. Thompson*, 856 N,W. 2d 915, 919 (Iowa 2014). However, the crucial fact here is that those reasons, however terse in speech or succinct in writing, must be explicitly related to the issue of ordering consecutive sentences. *State v. Hill,* N.W.2d 269, 274 (Iowa 2016); *see also State v. Adcock,* No. 01-1638, 2002 WL 31641649 (Iowa Ct. App. Nov. 25, 2002). The Court of Appeals contends that the written order of disposition, use of the phrase "for the reasons stated above," and pointing to the template

language above, satisfies this standard. However, this is a gross misunderstanding of *State v. Hill* as well as the body of cases above which criticize such boilerplate language.

It would appear that the Court of Appeals recognized this problem by stating that their decision was "by the slimmest of margins." Caselaw does allow for the same reasoning behind a particular sentence to be employed in the decision to run sentences consecutively. However, this still requires a record ***beyond boilerplate language*** to illustrate that line of thought. The Court of Appeals has only found that language existed in the record, but has done nothing to show how that language was sufficient by the standards mentioned above. To argue that a five-word phrase, which itself only points to a copy-and-paste template satisfies those standards is inadequate.

A concurrence to the *Hill* ruling speaks to this concern. When it came to decisions regarding consecutive sentences "the district court must be careful to avoid mere boilerplate recitation and demonstrate an exercise of reasoned judgment." *Id.* (Appel J. Wiggins concurring). That fear is exemplified here as the court has upheld that words which don't even make a full sentence can represent the "careful and thoughtful discretionary decision" needed to double a defendant's sentence in its entirety. *Id.*

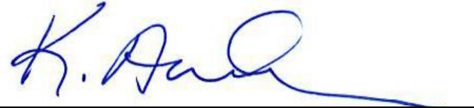
This issue is important for review as the current ruling contradicts the principle behind rulings like *Lemadue*, *Cooper*, *Hill*, and many more. Furthermore, it may allow for this deficient language to be employed in the future thus eroding the opportunity for adequate appellate review. *See State v. Barnes*, 791 N.W.2d 827 (Iowa 2010); *State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000); and *State v. Thacker*, 862 N.W.2d 402, 408 (Iowa 2015).

Even here the Court of Appeals' review seems to fall victim to "divining" the district court's motivations. *Cooper* at 802. There is nothing on which to determine whether the court was aware of the discretion it had in that decision. *Hill* at 274. Without any other form of record on the subject, the Court of Appeals was forced to find meaning in a phrase relating to another paragraph that itself speaks to matters unsaid. The record is simply deficient. The Court of Appeals' ruling fails to consider the actual content of the language it cites and does nothing to compare that language to the standards it is required to satisfy.

The judgment should be overturned, and the matter remanded for resentencing.

CONCLUSION

For the above-mentioned reasons, Defendant/Appellant Scott Luke respectfully requests the Iowa Supreme Court grant Further Review in this matter.



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I certify that on the 17th day of September, 2023, I served a copy of this document by mailing a copy to all parties appearing pro se or to their attorneys of record at their respective addresses below:

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This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because the brief contains 3,200 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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/s/ Karmen Anderson 9/17/2023
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