



State of Iowa v. Alfred Nicholas Dupree Wiles

2023 | Cited 0 times | Court of Appeals of Iowa | December 20, 2023

IN THE COURT OF APPEALS OF IOWA

No. 22-1391 Filed December 20, 2023

STATE OF IOWA, Plaintiff-Appellee,

vs.

ALFRED NICHOLAS DUPREE WILES, Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Tabitha Turner, District Associate Judge.

A defendant appeals the consecutive sentences imposed following revocation of a deferred judgment and conviction for a domestic abuse assault offense. SENTENCES VACATED AND REMANDED FOR RESENTENCING.

Martha J. Lucey, State Appellate Defender, for appellant.

Brenna Bird, Attorney General, and Martha E. Trout, Assistant Attorney General, for appellee.

Considered by Tabor, P.J., and Badding and Chicchelly, JJ. BADDING, Judge.

Alfred Wiles appeals the sentences imposed following revocation of his deferred judgment for possession of marijuana, first offense, and conviction for domestic abuse assault impeding air or blood flow. He claims the district court



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imposed illegal sentences by sending him to prison for one year on the marijuana

The State concedes those two errors but contests the other sentencing

challenges raised by Wiles that (1) the district court abused its discretion by

failing to (a) consider evidence that Wiles was in therapy, (b) provide Wiles with

his right of allocution, and (c) state reasons for imposing consecutive sentences;

without advance notice. We vacate the illegal sentences and remand for

resentencing.

I. Background Facts and Proceedings

In February 2022, while Wiles was on probation for assault while displaying

a dangerous weapon, he pled guilty to possession of marijuana, first offense. The

district court granted Wiles a deferred judgment and placed him on probation for

one year. The next month, Wiles was charged with domestic abuse assault

See Iowa Code

§ 708.2A(5) (2022). A probation violation report and two addendums were filed in

both cases in March. Wiles stipulated to these violations in June. That same

month, he pled guilty to a reduced charge of domestic abuse assault impeding air or blood flow, an aggravated misdemeanor. See *id.* § 708.2A(2)(d). The parties

to the probation violation report were filed. The report and each addendum stated

Wiles was on probation for possession of marijuana, second offense. 1 A combined

hearing on the new violations, the disposition for the prior violations, and

sentencing on the domestic abuse assault charge was held in August. In the



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probation officer before finding Wiles had violated his probation as alleged in the two new addendums.

Moving on to the disposition phase, defense counsel argued that Wiles should continue on probation. The court then heard a lengthy statement of allocution from Wiles, during which he talked about his weekly therapy and a head injury he had suffered. When Wiles was finished, the State called the probation officer back to the stand for her recommendation on disposition. She testified that Wiles had not given her any documentation about his head injury or ongoing therapy, though he did give her one progress report. Wiles asked the court to revoke his deferred judgment and send him to prison. The State

echoed that recommendation, arguing Wiles was

The court sided with the State, telling Wiles:

1 reduced charge of possession of marijuana, first offense. I believe that at some point you

You were placed on probation January 19, 2022, for assault with a dangerous weapon. And I reviewed that case as well, and what you pled guilty to was assaulting a person and then threatening to commit yet another violent crime.

in fact, actively engaged in therapy. I believe that at some point you

were engaged in therapy, but nobody has given me a progress report. You were actively engaged in therapy addressing what is clearly some issues since you now

You have been noncompliant with probation in several missed [Iowa Domestic Abuse Program] classes, and you were

removed from those. . . . have to look at two things: One is rehabilitation, and the other is

stipulated to using THC through your probation on at least one



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rehabilitate you. . . . And you keep committing these crimes.

I guess that issue is

causing you there. So as such, sir, I do not believe that continued probation is appropriate in this matter.

-of-marijuana

charge and sentenced him to one year in prison, as the State had requested. The court also revoked his probation for assault with a dangerous weapon and imposed consecutively to one another.

With the probation matters finished, the court turned to sentencing on arguments previously were kind of conjoined in both cases seeing probation on the . . . violation matters as well as a probation sentence since the Court has now sentenced him to prison on the probation

already been discussed here today and based on the arguments that

have previously been made on the record, that Mr. Wiles be given the current sentence concurrent to the probation violation to

since this is a new sentencing, if your client would like to make a statement of

last the court cut him off, saying:

You certainly did, Mr. Wiles. I listened to everything you said something you would like to say as it relates to what you want me to

do. You want me to run this concurrent or consecutive?

everything [

The court rejected that request and sentenced Wiles to a term of

incarceration not to exceed two years, consecutive to the other two charges, for a

total of five years in prison. The court explained:



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violent nature of these offenses and the fact that you were on

probation and committed another violent offense. I deem it offenses by you. Probation is denied.

In the sentencing order that followed, the court also ordered Wiles to complete the

Wiles appeals, challenging only the sentences imposed on his convictions

for possession of marijuana, first offense, and domestic abuse assault impeding

air or blood flow. 2 See State v. Thompson, 951 N.W.2d 1, 5 (Iowa 2020) (finding

order revoking deferred judgment and entering a judgment of conviction and

see also State v. Damme, 944 N.W.2d 98, 105 (Iowa 2020).

II. Standard of Review

reverse the decision of the district court absent an abuse of discretion or some

See State v. Formaro, 638 N.W.2d 720, 724

(Iowa 2002).

III. Analysis

A.

Citing State v. Ashley, 462 N.W.2d 279, 282 (Iowa 1990), Wiles contends the

2 The appeal does not include the probation revocation or sentence in the assault-with-a-dangerous-weapon case. See Euans v. State, No. 20-0212, 2022 WL direct appeal from a probation revocation proceeding where . . . the applicant was

see also State v. Rheuport, 225 N.W.2d 122, 123 (Iowa 1975); State v. Farmer, 234 N.W.2d 89, 90 91 (Iowa 1975). prosecutor was required to provide him with notice that his probation officer would

sentence for domestic abuse assault impeding air or blood flow, necessitating

resentencing in both cases. We reject this claim for several reasons.



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First, we find that Wiles failed to preserve error on this issue. See Top of

Iowa Coop. v. Sime Farms, Inc. range of interests protected by our error preservation rules, this court will consider

not raising this issue at trial or on a ongoing therapy, though he did cross- State v. Carter, No. 22-1016, 2023 WL 2673226, at *3 (Iowa Ct. App.

Mar. 29, 2023) (citing State v. Gordon, 921 N.W.2d 19, 23 (Iowa 2018), which held

that error-preservation rules applied to due-process challenge to risk assessment

tools used at sentencing); see also State v. Graham, 897 N.W.2d 476, 491

(Iowa 2017) (declining to address a sentencing due process issue that was not

raised in district court).

Second, even if Wiles could raise this issue for the first time on appeal, the

Ashley appears limited to cases in which a presentence investigation report has been

ordered. See notice have been codified in Iowa Code sections 901.3 and 901.4, and we believe that failure to provide the statutory notice renders such evidence inadmissible on

see also Iowa Code §§ 901.3, .4

(setting out requirements for presentence investigation reports). No presentence

investigation report was ordered here. Wiles does not provide any authority for his

not remove the

Third, unlike Ashley, the matters that Wiles complains about were not

uncharged offenses. Cf. 462 N.W.2d at 282 (finding that information about a

instead a response to issues that Wiles himself brought up during his statement of

testimony about a topic he introduced into the proceeding violated his right to due



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process. See *State v. Drake* nt in a

criminal case will not be disturbed because of sentencing procedures unless there is a showing of abuse of discretion, procedural conduct prejudicial to defendant, circumstances which manifest inherent unfairness and injustice, or conduct which off

B. Sentencing Considerations

Evidence of therapy. In a related claim, Wiles asserts the district court contends this was erroneous because he told the court that he was in therapy.

But, as the State points out, the court was not required to believe Wiles. See *State v. Wingfield*, No. 22-1415, 2023 WL 6292302, at *2 (Iowa Ct. App. Sept. 27, 2023)

court was not required to take his statements, either at sentencing or to the [presentence investigati -of-marijuana

charge, which we are vacating. So we need not address it further.

Right of allocution. Wiles next asserts that he was denied allocution before the court sentenced him on his conviction for domestic abuse assault impeding air or blood flow. Iowa Rule of Criminal Procedure 2.23(3)(d) entitles defendants to personally address the court to make a statement in mitigation of punishment.

State v. Lumadue, 622

N.W.2d 302, 304 (Iowa 2001). Instead, *Id.* (citation omitted).

The record shows the court gave Wiles several opportunities to speak first at the revocation disposition and then twice during the sentencing for the domestic



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charge. See State v. Oo, No. 22-0661, 2023 WL 4104028, at *2 (Iowa Ct. App.

Id.; accord State v. Craig, 562

N.W.2d 633, 635 (Iowa 1997) (noting substantial compliance with the rule is sufficient and discussing cases finding such compliance). We accordingly reject

this claim.

Reason for consecutive sentence. Finally, Wiles asserts the court

ffense before the court.

Wiles was on probation for assault with a dangerous weapon a butcher knife when he was charged with domestic abuse assault impeding air or blood flow. So

we do not find the court abused its discret consecutive sentences were appropriate. See State v. Rawls, No. 18-0882, 2019

WL 2145722, at *2 (Iowa Ct. App. May 15, 2019) (finding imposition of consecutive

C. Illegal Sentences

The district court, likely led astray by the probation violation report and

addendums, sentenced Wiles to one year in prison after revoking his deferred

judgment for possession of marijuana, first offense. The State concedes this was

an illegal sentence because the maximum sentence for that offense is six months

in jail. See Iowa Code § 124.401(5). The State also concedes that the district

court did not have the authority to require Wiles to complete the Iowa Domestic

Abuse Program while incarcerated. See, e.g., State v. Gardner,

No. 22-0422, 2023 WL 153509, at *2 (Iowa Ct. App. Jan. 11, 2023) (agreeing with

-offender conviction of an offense under Iowa Code section 708.2A(2), see Iowa Code



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§ 708.2A(10), Wiles is correct that decisions about programming for inmates are left to the department of corrections. See Iowa Code § 904.202; State v. Smith, No. 18- department of corrections may still require Smith to participate in the sex offender treatment program, but that decision is within the authority of the department, not accord Dykstra v. Iowa Dist. Ct., 783 N.W.2d 473, 478 79 (Iowa 2010).

D. Remedy

State v.

Suchanek, 326 N.W.2d 263, 265 (Iowa 1982); accord State v. Draper, 457

N.W.2d upward or

downward from the legislatively authorized sentence for a given offense, the

pronounced sentence is a nullity subject to correction is sentenced for multiple offenses and a portion of the sente State v.

Vandermark, 965 N.W.2d 888, 895 (Iowa 2021) (citation omitted). But we are not

required to do so, even if the sentences are severable. Id. resentencing is appropriate when the district court considered the sentences to be

Id.; accord State v. Keutla, 798

N.W.2d 731, 735 (Iowa 2011). We determine that was the case here. domestic abuse assault

impeding air or blood flow and remand for resentencing on that conviction. We

also reverse the revocation of his deferred judgment, adjudication of guilt, and

sentence imposed for the possession-of-marijuana charge and remand to the

State v. Bowen, No. 22-



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0278, 2022 WL 16985663, at *3 (Iowa Ct. App. Nov. 1 sentencing decision here was made as part of the disposition decision of a

probation-revocation proceeding, we put Bowen back in the same position he was

accord Keutla, 798 N.W.2d at 735

(reversing revocation of deferred judgment and remanding to the district court for

ed

are vacating the sentences in their entirety, the district

court has full discretion on remand to determine what sentences should be

imposed within statutory limits, including whether the sentences should be

consecutive or concurrent to one another. 3 See Bowen, 2022 WL 16985663, at *3

3 The State cites State v. Austin State need not produce defendant at proceeding to correct sentence); see also

Iowa R. Crim. P. 2.27(3)(b). In Austin State v.

Candelaria, No. 04-1103, 2005 WL 1397767, at *4 n.2 (Iowa Ct. App. June 15, 2005); accord Austin, 585 N.W.2d at 245 (vacating the sentence and

not dictating what sentences should be imposed on remand. As a result, the -over of the probation-revocation disposition, we do not suggest what disposition should be imposed or that it must be more lenient than imposed

here accord State v. Remmers not intimate that the new sentence must be less than the present sentence

different judge because this is not a case where the court considered an improper

sentencing factor. Compare State v. Davison, 973 N.W.2d 276, 289 (Iowa 2022)

(remand for resentencing without specifying that it be done by a different judge

where the district court may have mistakenly believed defendant was ineligible for



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parole), with State v. Lovell, 857 N.W.2d 241, 243 (Iowa 2014) (remanding for resentencing before a different judge where the district court considered an impermissible sentencing factor); see also State v. Davis, 971 N.W.2d 546, 558 (Iowa 2022) (remanding for resentencing by a different judge where the State breached a plea agreement).

SENTENCES VACATED AND REMANDED FOR RESENTENCING.

sentencing proceeding at which [Wiles] would otherwise have a right to be present Candelaria, 2005 WL 1397767, at *4 n.2; see also Iowa R. Crim. P. 2.27(1)

