

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-159

FEBRUARY TERM, 2006

State of Vermont	}	APPEALED FROM:	
	}		
v.	}	District Court of Vermont,	
	}	Unit No. 3, Caledonia Circuit	
James Lund	}	DOCKET NOS. 165-3-04/229-4-04/	319-
	}	5-04 Cacr	

Trial Judge: Walter M. Morris, Jr.

In the above-entitled cause, the Clerk will enter:

Defendant appeals from the trial court=s sentencing order, which was based on his plea of guilty to felony cocaine possession, driving while intoxicated (third offense), and four misdemeanor charges. He argues that the trial court abused its discretion by failing to explain why the sentences on the felony charges would run consecutively rather than concurrently. We affirm.

In March 2004, defendant was stopped by police for driving erratically. He was found to be under the influence of alcohol, and a search of his person revealed cocaine and a large amount of cash. Defendant was charged with two felonies: possession of cocaine consisting of 2.5 grams or more in violation of 18 V.S.A. ' 4231(a)(2) and driving under the influence, third offense, in violation of 23 V.S.A. ' 1201(a)(2).^{*} During the following two months, defendant was also charged with four misdemeanors: two violations of conditions of pre-trial release; possession of cocaine; and possession of marijuana. In December 2004, defendant entered into a plea agreement, which the trial court accepted. Defendant agreed to a 4-5 year sentence on the felony cocaine possession count and a 4-5 year sentence on the DWI count, to be served consecutively, and shorter sentences for the misdemeanor counts to be served concurrently. Defendant was expressly allowed to argue for less and/or concurrent sentences at sentencing.

At the sentencing hearing, the State presented evidence regarding defendant=s lengthy criminal history, and it asserted that defendant appeared to be an incorrigible career criminal. Defendant argued that a lengthy sentence was inappropriate given the nature of the current offenses. The court issued its sentencing decision on the record, explaining that the key factor in its decision was defendant=s record of prior convictions, which included serious and violent offenses. The court recognized that defendant=s criminal history was influenced by substance abuse, but it found that defendant had consistently engaged in criminal offenses of great significance to the safety of others. The court found the felony cocaine possession count particularly noteworthy given the quantity of cocaine that defendant possessed as well as the fact that he had approximately \$1200 in cash on him when he was arrested. The court concluded that defendant=s sentence should reflect both punishment and deterrence given defendant=s prior criminal record and his apparent inability to avoid reoffending. The court thus imposed a sentence of 3-5 years on the felony cocaine count and 2 1/2-5 years on the DWI count, to be served consecutively, and lesser concurrent sentences for the misdemeanor offenses. Defendant appealed.

On appeal, defendant argues that the trial court abused its discretion because, although the court explained why it imposed its sentence on each count, it failed to explain why the sentences should run consecutively. This argument is

without merit. Under 13 V.S.A. ' 7032(b), a defendant may be sentenced to As many terms as there are offenses of which he is convicted,@ and the trial court is authorized to determine whether multiple sentences should run consecutively or concurrently at the time of sentencing. The sentencing court has wide discretion in determining the sentence to be imposed and it Amay consider factors such as the defendant=s disposition, family, and prior criminal record, in addition to the nature of the crime for which the defendant was convicted.@ State v. Neale, 145 Vt. 423, 435 (1985). In this case, the trial court expressly ordered the sentences to run consecutively and the reasons underlying its decision are plainly reflected in its analysis, cited above. The court sought to impose a sentence that would punish defendant for his repeated criminal behavior and deter him from committing more crimes. Moreover, the sentences imposed by the court were consistent with the terms of the plea agreement and with the statutory penalties for the crimes to which defendant pled guilty. See State v. Cyr, 141 Vt. 355, 358 (1982) (AIn sentencing we defer to the lower court and will not review sentences within the statutory limits absent exceptional circumstances.@); see also 18 V.S.A. ' 4231(a)(2) (maximum sentence for felony cocaine possession is five years imprisonment and a \$100,000 fine); 23 V.S.A. ' 1210(d) (maximum sentence for DWI, third offense, is five years in prison and \$2500 fine). We find no error in the court=s decision.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice

* 23 V.S.A. ' 1201(a)(2) was amended after defendant=s conviction such that the relevant language previously falling under ' 1201(a)(2) now falls under ' 1201(a)(3) in identical form. 2005, No. 37, ' 1.