

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,)
)
 Plaintiff-Appellee,)
)
 v.) S.CT. NO. 20-0950
)
 CEASAR DAVISON,)
)
 Defendant-Appellant.)

APPEAL FROM THE IOWA DISTRICT COURT
FOR DES MOINES COUNTY
HONORABLE JOHN M. WRIGHT, JUDGE

APPELLANT'S BRIEF AND ARGUMENT

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CERTIFICATE OF SERVICE

On the 6th day of April, 2021, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Caesar Davison, #6288842, Correctional Treatment Unit, 2000 N. 16th Street, Clarinda, IA 51632.

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The district court violated the defendant's Due Process rights by imposing \$150,000 restitution award but failing to require a jury finding that the defendant caused the death of another person.

Authorities

State v. Izzolena, 609 N.W.2d 541, 545 (Iowa 2000)

State v. Hamrick, 595 N.W.2d 492, 493 (Iowa 1999)

Iowa Code § 910.3B(1) (2015)

1. The “restitution” required by section 910.3B(1) only applies when the defendant has been convicted of a felony that by definition “caused the death” of another person.

Iowa Code § 910.3B(1) (2015)

State v. Piper, 663 N.W.2d 894, 900 (Iowa 2003)

State v. Kolbet, 638 N.W.2d 653, 663 (Iowa 2001)

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State v. Corwin, 616 N.W.2d 600, 601 (Iowa 2000)

State v. Rohm, 609 N.W.2d 504, 509 (Iowa 2000)

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Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531 (2004)

S. Union Co. v. United States, 132 S.Ct. 2344, 2348-2349 (2012)

2. Davison was not convicted of a crime in which his acts caused the death of another.

Iowa Code § 708.2(4) (2017)

Iowa Code § 706.1 (2017)

Iowa Code § 706.3(1) (2017)

II. The court abused its discretion by not considering the possibility of probation, mistakenly believing that the defendant was not eligible for probation.

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State v. Washington, 356 N.W.2d 192, 197 (Iowa 1984)

Iowa Code § 811.1(2) (2017)

Iowa Code § 702.11 (2017)

State v. Moore, 936 N.W.2d 436, 439 (Iowa 2019)

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because the issue raised involves a substantial issue of first impression in Iowa. Iowa R. App. P. 6.903(2)(d) and 6.1101(2)(c). Specifically, this case asks the court to determine whether the Due Process Clause of the United States Constitution requires the jury to make a finding that the defendant caused the death of another person in order to determine the applicability of the \$150,000 restitution of Iowa Code section 910.3B(1) (2017).

STATEMENT OF THE CASE

Nature of the Case: This is an appeal from a conviction and sentence following a jury trial for Assault Causing Serious Injury and Conspiracy to Commit Murder in Des Moines County case number FECR008098.

Course of Proceedings and Facts¹: On April 2, 2019, the State charged the defendant, Caesar Davison, with Murder in the First Degree in violation of Iowa Code sections 707.1 and 707.2(1) (2017), a class A felony in Count I, and Conspiracy to Commit a Forcible Felony: Murder, in violation of Iowa Code sections 706.1 and 706.3 (2017), a class C felony. The State alleged that the defendant, along with others, conspired together and shot and killed Demarcus Chew on September 10, 2017. (Trial Information) (App. pp. 4-11). The case was tried to a jury beginning February 11, 2020. (Trial tr. Vol. I, p. 1, L. 1-25).

The evidence at trial was that two different groups of people went to a club in Gulfport, Illinois, sometime in the late hours of September 9, 2017, or the early morning hours of September 10, 2017. (Trial tr. Vol III, p. 38, L. 7- p. 40, L. 20; Vol IV, p. 180, L. 6- 12). Apparently the victim had a

¹ Because the issue raised in this appeal concern the sentencing order, the facts will be summarized and not set out in detail.

“bounty” on his head stemming from a shooting involving Chew’s brother and a man named A.J. Smith. (Trial tr. Vol III, p. 33 L. 20 – p. 23, L. 14). Chew was at the club in Gulfport that night. (Trial tr. Vol. III, p. 40, L. 10-20). In the early morning hours of September 10th Chew left the club with friends in a vehicle. Chew was in the backseat of the car. (Trial tr. Vol. III, p. 90, L. 10 – p. 91, L. 17). When they arrived at their destination, Chew was shot and killed. (Trial tr. Vol. III, p. 95, L. 2 – p. 97, L. 10; Vol. IV, p. 7 – p. 142, L. 7).

After a long investigation, the State charged the defendant and others who had been at the same club that night. Two of those people, Antoine Spann and Andre Harris, made plea agreements and testified against the defendant at his trial. According to them, their group, which consisted of Andre Harris, Emmanuel Spann, Antoine Spann, and the defendant, left the club and followed the vehicle that Chew was in. Once they arrived at where Chew had stopped, the defendant and Emmanuel Spann exited the vehicle and came back a few seconds later. (Trial tr. Vol. IV, p. 194, L. 23 – p.

200, L. 25; Vol. V, p. 107, L. 5 – p. 112, L. 23). According to Antoine Spann, he heard shots fired during that time they were outside of the car. (Trial tr. Vol. V, p. 7-14). According to Harris, someone asked if they got him, and the defendant said “yeah, it was up close.” (Trial tr. Vol. IV, p. 201, L. 1-16). Police were called and Chew was pronounced dead at the hospital. (Trial tr. Vol. IV, p. 142, 2-7).

Following the jury trial, the defendant was found guilty under Count I of the lesser included offense of Assault Causing Bodily Injury in violation of Iowa Code section 708.2(4) (2017), a class D felony. He was also found guilty as charged in County II, Conspiracy to Commit a Forcible Felony: Murder, in violation of Iowa Code sections 706.1, 706.3(1) (2017), a class C felony. (Verdict Forms, Judgment Entry) (App. pp. 14-15, 22-24). On July 13, 2020, the defendant was sentenced to prison for a term not to exceed 15 years. (Judgment Entry) (App. pp. 22-24). On July 16, 2020, the defendant filed a notice of appeal. (Notice of Appeal) (App. pp. 25-26).

ARGUMENT

I. The district court violated the defendant's due process rights by imposing \$150,000 restitution award but failing to require a jury finding that the defendant caused the death of another person.

A. Preservation of Error and Standard of Review: Error

was preserved because counsel raised and argued the issue to the district court, which denied it. (Defendant's Objection to Proposed Restitution Award and Brief; Sentencing Hrg. p. 6, L. 8 – p. 13, L. 20; p. 19, L. 8-16) (App. pp. 16-21).

Constitutional issues are reviewed de novo. State v. Izzolena, 609 N.W.2d 541, 545 (Iowa 2000) (citing State v. Hamrick, 595 N.W.2d 492, 493 (Iowa 1999)).

B. Discussion: Iowa Code section 910.3B(1) provides

In all criminal cases in which the offender is convicted of a felony in which the act or acts committed by the offender caused the death of another person, in addition to the amount determined to be payable and ordered to be paid to a victim for pecuniary damages . . . the court shall also order the offender to pay at least one hundred fifty thousand dollars in restitution to the victim's estate if the victim died testate. If the victim died intestate the court shall order the offender to pay the restitution to the victim's heirs at law as determined pursuant to section 633.210.

Iowa Code section 910.3B(1) (2015).

Although the statute identifies the \$150,000 payment as “restitution,” the Iowa Supreme Court has determined that the payment assessed pursuant to 910.3B(1) is a fine for constitutional purposes. State v. Izzolena, 609 N.W.2d 541, 549 (Iowa 2000). To reach this conclusion, the court relied on the punitive aspects of the statute and noted that it was intended, at least in part, to punish the defendant and serve purposes normally associated with punishment—retribution and deterrence. Id.

1. The “restitution” required by section 910.3B(1) only applies when the defendant has been convicted of a felony that by definition “caused the death” of another person. The language of Iowa Code section 910.3B(1) limits its application to cases in which a defendant has been convicted or pled guilty to a felony containing an element of causing the death of another person: “In all criminal cases in which the offender is convicted of a felony in which the act or acts committed by the offender caused the death of another

person.” Iowa Code section 910.3B(1). The language limits to application to certain types of felonies—felonies in which the defendant’s acts caused the death of another person.

The Iowa Supreme Court has not decided whether section 910.3B(1) applies when the defendant has not been convicted of a crime which includes an element that he caused the death of another. See, e.g., State v. Piper, 663 N.W.2d 894, 900 (Iowa 2003) (defendant convicted of first degree murder argued section 910.3B violates the Ex Post Facto Clause); State v. Kolbet, 638 N.W.2d 653, 663 (Iowa 2001) (defendant convicted of homicide by vehicle challenged restitution on double jeopardy and excessive fines grounds); State v. Izzolena, 609 N.W.2d 541, 545 (Iowa 2000) (considering whether \$150,000 restitution violated the constitutional prohibitions against excessive fines, constitutional double jeopardy protections, or due process for someone who was convicted of unintentionally causing the death of another by driving in reckless manner in violation of Iowa Code section 707.6A(2)(a)); State v. Klawonn, 609 N.W.2d

515, 517 (Iowa 2000) (defendant convicted of involuntary manslaughter challenged restitution as violation of the Excessive Fines, Double Jeopardy, and Due Process Clauses of the state and federal constitutions and an abuse of discretion); State v. Corwin, 616 N.W.2d 600, 601 (Iowa 2000) (defendant convicted of two counts of homicide by vehicle challenged restitution as violation of prohibition on ex post facto laws); State v. Rohm, 609 N.W.2d 504, 509 (Iowa 2000) (defendant convicted of involuntary manslaughter challenged the victim restitution award on constitutional grounds); State v. Artzer, 609 N.W.2d 526, 532 (Iowa 2000) (defendant convicted of second degree murder claimed restitution award violated the Excessive Fine and Double Jeopardy Clauses of the state and federal constitutions and was an abuse of discretion); State v. Konchalski, 641 N.W.2d 202 (Iowa 2001) (defendant convicted of voluntary manslaughter raised procedural and substantive due process challenges to the section 910.3B restitution scheme). However, the court's decision in Izzolena indicates that the court expected that section 910.3B would only apply

in that situation.

In concluding that the restitution did not violate the excessive fine prohibitions, the court relied on the relatively limited applicability of the statute. “[T]he restitution award does not apply to all crimes resulting in the death of another.” Izzolena, 609 N.W.2d at 550. It only applies to felonies, and it “only applies to offenders who committed a crime which caused the death of another human.” Izzolena, 609 N.W.2d at 550. As well, the court noted that the restitution could not be imposed in a case involving an unintentional or negligent offender. Id. at 550.

When the court considered whether the imposition of the restitution violated constitutional due process guarantees, the court considered the risk of the restitution being imposed erroneously:

However, the risk of erroneous deprivation of this interest through the available procedures is virtually non-existent. In order for this award to be imposed upon an individual, guilt beyond a reasonable doubt must be shown at trial, or a plea of guilty must be accepted for the underlying felonious offense. Additionally, the commission of

the offense must have been the proximate cause of the victim's death. And finally, the defendant is afforded the opportunity for a hearing once the court issues the restitution order, at any time during the pendency of the order. *See Iowa Code § 910.7 (1997)*. Adding additional or substitute procedures to the process would not provide any additional safeguards to the defendant, as sufficient procedure with respect to the imposition of the award are currently in place.

Izzolena, 609 N.W.2d at 553.

This discussion indicates that the court contemplated the restitution award would only be imposed after a defendant had been convicted of or pled guilty to proximately causing the death of another. Such a finding could only be made if causing the death of another was an element of the crime for which the defendant was convicted.

It is well-established that the Sixth Amendment requires that any factual determination increasing a defendant's sentence must be proven beyond a reasonable doubt by the State. Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S. Ct. 2348, 2362-2363 (2000); Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531 (2004). The United States Supreme Court

clarified that the Six Amendment principle applies when the sentence involved is a criminal fine. S. Union Co. v. United States, 132 S. Ct. 2344, 2348-2349 (2012).

The previous challenges to section 910.3B have not raised challenges based on a defendant's Sixth Amendment and article 1, section 9 right to a jury trial. Izzolena considered whether the post-deprivation hearing to address the payment of the fine satisfied the due process clauses of the Iowa and United States constitutions and concluded it did. Izzolena, 609 N.W.2d 553. However, as discussed above, part of the court's rationale for its conclusion was that the statute would only be imposed when the defendant was a convicted of a crime which was the proximate cause of the death of another person. Izzolena, 609 N.W.2d at 553. If the court concludes that the restitution may apply even when the defendant has not been convicted of causing the death of another, then the Sixth Amendment and article I, section 9 requires that the fact of causation must be proven beyond a reasonable doubt.

2. Davison was not convicted of a crime in which his acts caused the death of another.

During the sentencing hearing, the defendant argued to the court that it would be a violation of due process to impose the \$150,000 restitution on the defendant because it is considered a punitive and, therefore, there needed to be a finding by the jury that the defendant caused the death of the victim. (Sentencing Hrg. tr. p. 7, L. 12 – p. 8, L. 23). The State disagreed that the restitution under 910.3B was a fine and was purely restitution. (Sentencing Hrg. p. 10, L. 8-16). The trial court recognized that the defendant made “a very good argument” and cited cases “relevant to the issue,” but then simply stated it would side with the State and impose the \$150,000 restitution. (Sentencing Hrg. tr. p. 19, L. 8-16).

In this case, the jury acquitted the defendant of every charge involving homicide. The defendant was charged with Murder in the First Degree and the court instructed the jury on the lesser included offenses, including Murder in the Second Degree and Voluntary Manslaughter. The jury did not

convict him of any of these offenses. Under that count he was convicted of the lesser offense of Assault Causing Serious Injury. (Verdict Forms) (App. pp. 14-15). That offense does not include a finding that the defendant caused the death of Demarcus Chew. Iowa Code § 708.2(4) (2017); (Jury Instruction No. 36) (App. p. 12).

The defendant was also convicted of Conspiracy to Commit a Forcible Felony: Murder. (Verdict Forms) (App. pp. 14-15). That crime does not include the element that the defendant caused the death of Demarcus Chew. Iowa Code §§ 706.1, 706.3(1) (2017); (Jury Instruction No. 41) (App. p. 13). The matter was not submitted to the jury as to whether the defendant caused the death or that he was the proximate cause of the death of Chew. Without such a finding by a jury beyond a reasonable doubt, the imposition of the \$150,000 was a violation of the defendant's due process rights under Apprendi, and the order must be vacated.

II. The court abused its discretion by not considering the possibility of probation, mistakenly believing that the defendant was not eligible for probation.

A. Preservation of error and standard of review: A

sentence imposed by the district court is reviewed for errors at law. Iowa R. App. P. 6.4; State v. Thomas, 547 N.W.2d 223, 225 (Iowa 1996). A sentence imposed in accordance with applicable statutes will be overturned only for an abuse of discretion. When a sentencing court has discretion, it must exercise that discretion. State v. Ayers, 590 N.W.2d 25, 27 (Iowa 1999). Failure to exercise that discretion calls for a vacation of the sentence and remand for re-sentencing. State v. Lee, 561 N.W.2d 353, 354 (Iowa 1997).

Review of sentencing is properly before this court upon direct appeal despite the absence of objection in the trial court. See State v. Thomas, 520 N.W.2d 311, 313 (Iowa Ct. App. 1994). This court considers the district court's failure to exercise its discretion a defect in the sentencing procedure to which the error preservation rules do not appeal. State v. Ayers, 590 N.W.2d 25, 27 (Iowa 1999).

B. Discussion: “When a sentencing court has discretion, it must exercise that discretion. State v. Finchum, 364 N.W.2d 222, 225-226 (Iowa 1985).” State v. Ayers, 590 N.W.2d 25, 27 (Iowa 1999). “Failure to exercise that discretion calls for a vacation of the sentence and a remand for resentencing.” Id. (citing State v. Lee, 561 N.W.2d 353, 34 (Iowa 1997) (holding that “[w]here a court fails to exercise the discretion granted to it by law because it erroneously believes it has no discretion, a remand for resentencing is required”); *see also* State v. Washington, 356 N.W.2d 192, 197 (Iowa 1984) (finding error where trial court erroneously believed it did not have the discretion to consider a suspended sentence and probation).

The court sentenced the defendant to prison terms not to exceed five years for Count I and ten years on Count II run consecutively to each other. (Judgment Entry) (App. pp. 22-24). The sentencing court seemed to be under the belief that the defendant had been found guilty of a forcible felony. The court determined the defendant was not eligible for bond on appeal based on Iowa Code section 811.1(2) (2017), which

denies bail on appeal for those convicted of a forcible felony. However, the defendant was not convicted of a forcible felony. Iowa Code § 702.11 (2017). Although defense counsel alluded to the fact that the defendant was convicted of a forcible felony, the court should know what discretion it does or does not have. (Sentencing Hrg. tr. p. 6, L. 8-11); See State v. Moore, 936 N.W.2d 436, 439 (Iowa 2019) (finding the court abused its discretion by agreeing with counsel that he did not “have much wiggle room” in imposing the sentence). Because the court here did not believe it could consider a suspended sentence and probation, the court abused its discretion and remand is appropriate.

CONCLUSION

For these reasons, the Appellant requests the Court reverse the imposition of the \$150,000 of punitive restitution and vacate the sentence and remand for resentencing.

NONORAL SUBMISSION

Counsel requests not to be heard in oral argument.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$2.41, and that amount has been paid in full by the Office of the Appellate Defender.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

[X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 2,870 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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