IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. CAMERON JAMES HESS, Defendant-Appellant.	SUPREME COURT NO. 21-0079

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE SARAH E. CRANE, JUDGE

APPELLANT'S BRIEF AND ARGUMENT AND REQUEST FOR ORAL ARGUMENT

MARTHA J. LUCEY
State Appellate Defender

JOSH IRWIN
Assistant Appellate Defender
jirwin@spd.state.ia.us
appellatedefender@spd.state.ia.us

STATE APPELLATE DEFENDER'S OFFICE
Fourth Floor Lucas Building
Des Moines, Iowa 50319
(515) 281-8841 / (515) 281-7281 FAX

ATTORNEYS FOR DEFENDANT-APPELLANT

FINAL

CERTIFICATE OF SERVICE

On the 14th day of December, 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 Cameron Hess, 9011 S 44th St., Newton, IA 50208.

APPELLATE DEFENDER'S OFFICE

Josh Irwin
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
jirwin@spd.state.ia.us
appellatedefender@spd.state.ia.us

JI/lr/9/21
JI/ls/12/21

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitutional Provisions:

Statutes and Court Rules:

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The district court failed to recognize that it had discretion to suspend the special sentence and sex offender registry requirements.

Authorities

State v. Ayers, 590 N.W.2d at 27 (Iowa 1990)

State v. Wilson, 294 N.W.2d 824, 825 (Iowa 1980)

State v. Formaro, 638 N.W.2d 720, 724 (Iowa 2002)

Iowa R. App. P. 6.907 (2019)

Iowa Code § 702.11(1)

Iowa Code § 907.3

State v. Lee, 561 N.W.2d 353, 354 (Iowa 1997)

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

Iowa Code § 901.5(13) (2019)

State v. Roby, 897 N.W.2d 127, 144 (Iowa 2017)

A. 903B.1 special sentence

Iowa Code § 903B.1 (2019)

Doss v. State, 961 N.W.2d 701, 710 (Iowa 2021)

State v. Lathrop, 781 N.W.2d 288, 297 (Iowa 2010)

B. Sex offender registry

In re T.H., 913 N.W.2d 578, 596 (Iowa 2018)

Juvenile, Black's Law Dictionary (11th ed. 2019)

Iowa Code §§ 232.2(5), 232.2(29)

In re T.H., 913 N.W.2d 578, 596 (Iowa 2018)

Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168–69 (1963)

Div. of Criminal & Juvenile Justice Planning, Iowa Dep't of Human Rights, *Iowa Sex Offender Research Council Report to the Iowa General Assembly* 12 (2013) (available at https://humanrights.iowa.gov/sites/default/files/media/January%202013%20SORC%20Report.pdf) (last visited August 26, 2021)

Phoebe Geer, *Justice Served? The High Cost of Juvenile Sex Offender Registration*, 27 Dev. Mental Health L. 34, 42 (2008)

Does #1–5 v. Snyder, 834 F.3d 696, 705 (6th Cir. 2016)

Doe v. State, 189 P.3d 999, 1019 (Alaska 2008)

In re T.B., 2021 CO 59, ¶ 58, 489 P.3d 752, 768–69 (Colo. 2021)

State v. Williams, 2011-Ohio-3374, ¶¶ 16–20, 952 N.E.2d 1108, 1112–13 (Ohio 2011)

Wallace v. State, 905 N.E.2d 371, 384 (Ind. 2009)

Commonwealth v. Baker, 295 S.W.3d 437, 447 (Ky. 2009)

State v. Letalien, 2009 ME 130, ¶ 62, 985 A.2d 4, 26 (Me. 2009)

People v. Betts, --- N.W.2d ----, No. 148981, 2021 WL 3161828, at *15 (Mich. July 27, 2021)

Doe v. State, A.3d 1077, 1100 (N.H. 2015)

Starkey v. Oklahoma Dep't of Corr., 2013 OK 43, ¶ 77, 305 P.3d 1004, 1030 (Okla. 2013)

Klouda v. Sixth Jud. Dist. Dep't of Corr. Servs., 642 N.W.2d 255, 261 (Iowa 2002)

Sentence, Black's Law Dictionary (6th Ed. 1990)

State v. Cole, No. 06-0579, 2007 WL 257856, at *2 (Iowa Ct. App. Jan. 31, 2007)

State v. Richardson, 890 N.W.2d 609, 617 (Iowa 2018)

Iowa Code § 692A.103(1)

In re J.D.P., No. 10-0115, 2011 WL 441520, at *4 (Iowa Ct. App. Feb. 9, 2011)

Iowa Code § 901.5

Iowa Code § 692A.102

Iowa Code § 692A.113

Iowa Code § 692A.114(2)

Iowa Code § 692A.111(1)

Iowa Code § 692A.128(2)(a)

II. If this Court concludes the district court had no discretion regarding whether to require Hess to register as a sex offender, that requirement, which imposes a mandatory minimum term of punishment for offenses committed when Hess was a juvenile, constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution and article I, section 17 of the Iowa Constitution.

Authorities

State v. Bruegger, 773 N.W.2d 862, 870–72 (Iowa 2009)

In re T.H., 913 N.W.2d 578, 596 (Iowa 2018)

State v. Lyle, 854 N.W.2d 378, 381 (Iowa 2014)

Iowa Code § 692A.103(1)

Iowa Code § 692A.128(2)(a)

Miller v. Alabama, 567 U.S. 460, 477 (2012)

U.S. Const. amd. VIII

Robinson v. California, 370 U.S. 660, 667 (1962)

Iowa Const. Art. I § 17

State v. Null, 836 N.W.2d 41, 51 (Iowa 2013)

Iowa Code § 692A.106(2)

Iowa Code § 692A.106(5)

Iowa Code § 692A.101(1)(a)

Iowa Code § 692A.108(1)

Iowa Code § 692A.110(1)

Iowa Code § 692A.102(1)(c)

Iowa Code § 692A.108(1)(c)

Iowa Code § 692A.108(2)

Iowa Code § 692A.121(1)

Iowa Code § 692A.121(2)(b)(1)

Iowa Code § 692A.113

Iowa Code § 692A.114(2)

Iowa Code § 692A.111(1)

Iowa Code § 692A.128(1)

Iowa Code § 692A.128(2)(a)–(e)

A. Mandatory registration for offenses committed by juveniles is punishment.

In re T.H., 913 N.W.2d 578, 596 (Iowa 2018)

B. Mandatory sex offender registration, with a mandatory minimum term, is cruel and unusual when applied to juveniles.

State v. Lyle, 854 N.W.2d 378, 381 (Iowa 2014)

Graham v. Florida, 560 U.S. 48, 61 (2010)

34 U.S.C. § 20927(a) (2018)

In re C.P., 2012-Ohio-1446, ¶¶ 30–37, 967 N.E.2d 729, 738–39 (Ohio 2012)

Supplemental Guidelines for Sex Offender Registration and Notification, 76 Fed.Reg. 1630, 1636 (Jan. 11, 2011)

National Consortium for Justice Information and Statistics, Survey on State Compliance with the Sex Offender Registration and Notification Act (SORNA) (2009) p. 2 (available at https://www.search.org/files/pdf/SORNA-StateCompliance Survey2009Rev071609.pdf, last visited August 26, 2021)

In re T.B., 2021 CO 59, ¶ 61, 489 P.3d 752, 769 (Colo. 2021)

Miller v. Alabama, 567 U.S. 460, 477 (2012)

Thompson v. Oklahoma, 487 U.S. 815, 836–38 (1988)

Roper v. Simmons, 543 U.S. 551, 575 (2005)

Kennedy v. Louisiana, 554 U.S. 407, 434 (2008)

Trop v. Dulles, 356 U.S. 86, 101 (1958)

Atkins v. Virginia, 536 U.S. 304, 311 (2002)

Martin Guggenheim, Graham v. Florida *and a Juvenile's Right to Age-Appropriate Sentencing*, 47 Harvard C.R.-C.L. L. Rev. 457, 466–74 (2012)

Donna M. Bishop, *Juvenile Offenders in the Adult Criminal Justice System*, 27 Crime & Just. 81, 84 (2000)

Johnson v. Texas, 509 U.S. 350, 367 (1993)

Thompson v. Oklahoma, 487 U.S. 815, 836–38 (1988)

Schall v. Martin, 467 U.S. 265–67 (1984)

Eddings v. Oklahoma, 455 U.S. 104, 115–16 (1982)

State v. Bruegger, 773 N.W.2d 862, 870–72 (Iowa 2009)

Miller v. Alabama, 567 U.S. 460, 465 (2012)

State v. Graham, 897 N.W.2d 476, 489 (Iowa 2017)

State v. Seering, 701 N.W.2d 655, 669 (Iowa 2005)

2009 Iowa Acts ch. 119, § 3

Iowa Code § 692A.103 (Supp. 2009)

State v. Pickens, 558 N.W.2d 396, 400 (Iowa 1997)

In re T.H., 913 N.W.2d 578, 596 (Iowa 2018)

Iowa Code § 692A.103(3)–(4)

Iowa Code § 232.54(1)(i)

Iowa Code § 232.54(1)

Iowa Code § 692A.128(2)(a)

J.D.B. v. North Carolina, 564 U.S. 261, 272 (2011)

Elizabeth Cauffman et al., *How Developmental Science Influences Juvenile Justice Reform*, 8 U.C. Irvine L. Rev. 21, 23–27 (2018)

Amy E. Halbrook, *Juvenile Pariahs,* 65 Hastings L. J. 1, 8–10 (2013)

Barry C. Feld, *Unmitigated Punishment: Adolescent Criminal Responsibility and LWOP Sentences*, 10 J. L. & Fam. Stud. 11, 45–61 (2007)

Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1000, 1011–15 (2003)

Elizabeth Cauffman & Laurence Steinberg, *The Cognitive and Affective Influences on Adolescent Decision-Making*, 68 Temp. L. Rev. 1763, 1770–89 (1995)

State v. Null, 836 N.W.2d 41, 51 (Iowa 2013)

State v. Pearson, 836 N.W.2d 88, 98 (Iowa 2013)

Elizabeth Scott et al., *Juvenile Sentencing Reform in a Constitutional Framework*, 88 Temp. L. Rev. 675, 707 (2016)

Iowa Code § 692A.104

Iowa Code § 692A.105

Iowa Code § 692A.110(1)

Iowa Code § 692A.113

Iowa Code § 692A.114(2)

Iowa Code § 692A.121(1)

Iowa Code § 692A.111(1)

Ewing v. California, 538 U.S. 11, 25 (2003)

State v. Harrison, 914 N.W.2d 178, 201 (Iowa 2018)

State v. Zarate, 908 N.W.2d 831, 847 (Iowa 2018)

In re T.H., 913 N.W.2d 578, 596 (Iowa 2018)

2013 SORC Report at 12

Phoebe Geer, Justice Served? The High Cost of Juvenile Sex Offender Registration, 27 Dev. Mental Health L. 34, 51 (2008)

Elizabeth J. Loterneau et al., *Juvenile Registration and Notification Policy Effects: A Multistate Evaluation Project* 31 (2018) (available at https://www.ojp.gov/pdffiles1/ojjdp/grants/251494.pdf) (last visited August 26, 2021)

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because it asks the Court to hold that the juvenile sentencing discretion provided by Iowa Code section 901.5(13) reaches the otherwise mandatory imposition of the special sentence under Iowa Code section 903B.1 and the sex offender registry requirements of chapter 692A, a substantial issue of first impression in Iowa. Iowa R. App. P. 6.903(2)(d); 6.1101(2)(c). Alternatively, this case should be retained by the Iowa Supreme Court because it asks the Court to hold that if section 901.5(13) sentencing discretion does not apply to the sex offender registry requirements, the mandatory imposition of those requirements, including a mandatory minimum term during which the registrant cannot request modification thereof, constitutes cruel and unusual punishment under the Eighth Amendment to the United States Constitution and article I, section 17 of the Iowa Constitution, raising a substantial constitutional question as to the validity of a statute as well as a fundamental issue of broad public

importance requiring prompt or ultimate determination by the Supreme Court. Iowa R. App. P. 6.903(d)(d); 6.1101(2)(a) and (d).

STATEMENT OF THE CASE

Nature of the Case

The Defendant-Appellant, Cameron James Hess, appeals from his sentence for four counts of sexual abuse in the second degree in violation of Iowa Code sections 709.1(1) (2015–2017), 709.1(3) (2015–2017), and 709.3(2) (2015–2017).[1]

Course of Proceedings

On August 2, 2018, the State charged Hess by Trial Information with six counts of sexual abuse in the second degree in violation of Iowa Code sections 709.1(1), 709.1(3), and 709.3(2). (Trial Information)(App. pp. 5-7). These

[1] The 2015 and 2017 versions of the Code are cited because Hess' offenses of conviction were alleged by trial information to have occurred within a date range: "between 2016 and 2017" (Counts III and IV), and "between January and May of 2018" (Counts V and VI). (Second Amended Trial Information)(App. pp. 27-29). The substance of these code sections was the same in both the 2015 and 2017 versions.

counts were initially spread across two case numbers, Polk County FECR317689 and FECR317870. The prosecutor filed a motion to consolidate the cases as Polk County case FECR317870, and the district court granted that request. (Motion to Close Case Number; Amended Order to Close Case Number)(App. pp. 4, 8-9). Hess was seventeen years old at the time he was charged; the offense dates in the trial information and its subsequent amendments range from 2010 until May 2018, when Hess was between nine and seventeen years old. Hess was arraigned and entered a plea of not guilty on August 6, 2018. (Arraignment Order)(App. pp. 10-12).

On August 14, 2018, Hess filed a motion requesting that his case be transferred to juvenile court. (Motion to Transfer Jurisdiction to Juvenile Court)(App. pp. 13-14).

Hess waived his right to a speedy trial on September 6, 2018. (Waiver of Speedy Trial)(App. p. 15).

On October 5, 2018, the district court heard argument on Hess' motion for transfer to juvenile court. The court

heard testimony from juvenile court officer Michael Jennings, who stated that in adult court Hess would be subject to mandatory special sentence and sex offender registry requirements which would be discretionary in juvenile court. (Waiver Hearing Tr. p. 12 L. 12–p. 13 L. 4, p. 56 L. 8–17). However, Jennings believed that because Hess had recently turned eighteen, juvenile court did not have the time or resources necessary to ensure rehabilitation. (Waiver Hearing Tr. p. 19 L. 1–6, p. 24 L. 15–24, p. 53 L. 5–14; JCO Waiver Report pp. 9–10)(Conf. App. pp. 38-39). The district court denied Hess' motion to transfer the case to juvenile court. (Order Denying Reverse Waiver)(App. pp. 16-21).

During a plea hearing on May 10, 2019, the prosecutor explained that the trial information contained incorrect offense dates for counts III, IV, and VI, and the court granted his motion to correct those dates (although no amended trial information was filed at that time). (5/10/2019 Hearing Tr. p. 4 L. 1–3, p. 5 L. 6–7). The prosecutor then explained that counts I and II, which the State alleged occurred when Hess

was "10 or 11 years old,"[2] were not properly before the criminal court, citing Iowa Code section 232.45(6)(a) (which requires a defendant to be fourteen years of age or older at the time of offense to be waived from juvenile to criminal court) and State v. Duncan, 841 N.W.2d 604 (Iowa Ct. App. 2013) (which held that a defendant generally cannot be tried in criminal court for offenses committed when they were younger than fourteen). (5/10/2019 Hearing Tr. p. 5 L. 16–p. 6 L. 9). Because of this change in circumstances, Hess declined to enter a guilty plea. (5/10/2019 Hearing Tr. p. 9 L. 18–p. 10 L. 9).

On June 25, 2019, Hess filed a waiver of his right to a jury trial, and a waiver of his one-year speedy trial right. (Jury Waiver; One-Year Speedy Trial Waiver)(App. pp. 22-23).

Following several status hearings, the case came before the district court for a bench trial on August 26, 2020. Prior

---

[2] Hess' date of birth is September 22, 2000. (5/10/2019 Hearing Tr. p. 5 L. 13–15). Because counts I and II allegedly occurred "between 2010 and 2011" with no specified month, he may have been as young as nine years old. See (Trial Information)(App. pp. 5-7).

to the hearing, the State filed an amended trial information, changing the offense date ranges for counts III and IV. (First Amended Trial Information)(App. pp. 24-26). After discussing Hess' desire to have a trial on the minutes and the procedure for such a trial, the court engaged in a colloquy confirming Hess' waiver of his right to a jury trial. (8/26/2020 Hearing p. 4 L. 2–p. 9 L. 21). The prosecutor again stated that counts I and II were not properly before the district court, and requested that the court find Hess not guilty of those counts. (8/26/2020 Hearing Tr. p. 13 L. 10–p. 14 L. 18). The prosecutor, after some discussion with defense counsel, discovered that the amended trial information filed prior to the hearing still had the incorrect offense date range for count VI, and was permitted to file another amended trial information. (8/26/2020 Hearing Tr. p. 20 L. 8–p. 21 L. 17; Second Amended Trial Information)(App. pp. 27-29).

On September 2, 2020, a verdict hearing was held. The court agreed with the State that counts I and II were not properly before the court, and so found Hess not guilty of

those counts. (Verdict Hearing p. 5 L. 1–12). The court found Hess guilty of counts III, IV, V, and VI. (Verdict Hearing p. 5 L. 13–p. 6 L. 15). The court also entered a written verdict outlining its findings of fact and of law. (Written Verdict)(App. pp. 30-37).

A presentence investigation report was filed on November 24, 2020. (PSI)(Conf. App. pp. 43-56). Prior to a sentencing hearing set for December 22, 2020, Hess filed a report authored by Dr. Luis Rosell which covered numerous topics, including background information about Hess, risk assessment scores, studies about juvenile psychology and recidivism rates, and concerns about testing performed by the Fifth Judicial District which were included in the presentence investigation report. (Defense Sentencing Exhibit A Rosell Report)(Conf. App. pp. 57-70). Hess also filed a sentencing memorandum discussing his history and risk assessment scores, studies regarding juvenile psychology and recidivism rates, and his proposed sentencing recommendation. (Sentencing Memorandum)(App. pp. 38-40). When the

prosecutor learned Hess did not intend to call Dr. Rosell to testify, he requested a continuance in order to subpoena Dr. Rosell and to call witnesses of his own. (12/22/2020 Hearing Tr. p. 11 L. 1–24). The court continued sentencing over defense counsel's resistance. (12/22/2020 Hearing Tr. p. 15 L. 7–p. 16 L. 5, p. 18 L. 6–24).

The sentencing hearing took place on January 6 and 7, 2021, with the parties appearing via the videoconferencing software GoToMeeting. (Sentencing Hearing p. 1). The court heard testimony from Dr. Rosell and the clinical services director for the Department of Correctional Services, Fifth Judicial District, Dr. Anthony Tatman. They testified about juvenile psychology, juvenile sex offender treatment and recidivism rates, Hess' risk assessment evaluations and scores, and the benefits and shortcomings of various risk assessment tools. (Sentencing Tr. p. 9 L. 8–p. 66 L. 22, p. 68 L. 15–p. 94 L. 25).

Following this testimony, the prosecutor argued Hess should not receive a deferred judgment, that his sentences on

counts III and IV should run concurrent to each other, that his sentences on counts V and VI run should concurrent to each other, that those concurrent sentences should run consecutive to one another for a total of fifty years, and that the sentences should be suspended with Hess placed on probation for five years. (Sentencing Tr. p. 96 L. 15–p. 97 L. 16, p. 99 L. 20–p. 100 L. 16). The prosecutor also stated that a lifetime special sentence and lifetime sex offender registry requirement were not punishment, and were required as a result of Hess' convictions. (Sentencing Tr. p. 97 L. 17–p. 98 L. 20). Defense counsel argued Hess should receive a deferred judgment, and that the court should not impose the special sentence or require Hess to register as a sex offender; counsel argued imposing those consequences would violate the equal protection and cruel and unusual punishment clauses of the United States and Iowa Constitutions. (Sentencing Tr. p. 110 L. 22–23, p. 113 L. 8–17, p. 114 L. 9–p. 118 L. 3).

Following these arguments, the court heard from Hess and from the mother of one of the victims, then recessed until

the following day. (Sentencing Tr. p. 120 L. 6–p. 126 L. 14). When the matter resumed, the court heard further argument from defense counsel that requiring Hess to register as a sex offender would raise constitutional problems, and the State responded. (Sentencing Hearing p. 127 L. 12–p. 133 L. 6, p. 135 L. 11–p. 139 L. 5).

The court denied Hess' request for deferred judgment, ran the sentences on all counts concurrent to one another for a total of twenty-five years, suspended the prison sentence, and placed Hess on probation for five years. (Sentencing Tr. p. 140 L. 14–24, p. 141 L. 22–p. 142 L. 13). The court rejected Hess' equal protection and cruel and unusual punishment arguments. (Sentencing Tr. p. 144 L. 10–p. 147 L. 2). The court ordered Hess to register as a sex offender. (Sentencing Tr. p. 148 L. 6–10). The court imposed the lifetime special sentence under Iowa Code section 903B.1. (Sentencing Tr. p. 150 L. 7–10). The court subsequently filed a written sentencing order outlining these requirements. (Sentencing Order)(App. pp. 41-47).

Hess filed a timely notice of appeal. (Notice of Appeal) (App. pp. 48-49).

Facts

Juvenile female M.F. reported inappropriate contact with Hess, including kissing and contact between his penis and her mouth. (Minutes p. 13)(Conf. App. p. 16). Officers learned that there may also have been inappropriate contact between Hess and his two half-sisters, C.H. and A.H. (Minutes p. 13) (Conf. App. p. 16).

C.H. and A.H. were interviewed at the Blank Children's STAR Center. (Minutes p. 19)(App. p. 22). C.H. described a single time when Hess put his penis in her mouth. (Minutes p. 19)(Conf. App. p. 22). A.H. described incidents which had occurred several years prior when Hess had put his hand under her shirt and down her pants; she said Hess had touched her breast skin to skin on one occasion, and that when he put his hand in her pants he only touched her thigh. (Minutes p. 19)(Conf. App. p. 22).

Police interviewed Hess after obtaining a Miranda waiver

from both Hess and his father (Hess was a juvenile at the time of the interview). (Minutes pp. 7, 15)(Conf. App. pp. 10, 18). Hess initially described accidental or fairly innocuous contact with M.F., but when pressed admitted to putting his penis in her mouth on two occasions. (Minutes pp. 8–9)(Conf. App. pp. 11-12). Hess described two times when he had touched A.H.'s vagina with his hand. (Minutes p. 20)(Conf. App. p. 23). Hess described one time when he had touched C.H.'s vagina with his hand, and one time when there had been contact between his penis and her lips. (Minutes pp. 20–21)(Conf. App. pp. 23-24).

ARGUMENT

I. The district court failed to recognize that it had discretion to suspend the special sentence and sex offender registry requirements.

Preservation of Error

The district court's failure to exercise its sentencing discretion constitutes defective sentencing procedure, and as a result the usual requirement of error preservation does not

apply. State v. Ayers, 590 N.W.2d at 27 (Iowa 1990) (citing State v. Wilson, 294 N.W.2d 824, 825 (Iowa 1980)).

Standard of Review

The sentence imposed in a criminal case is reviewed for correction of errors at law, and a district court's sentencing decision will be upheld unless there is an abuse of discretion or some defect in the sentencing procedure. See State v. Formaro, 638 N.W.2d 720, 724 (Iowa 2002) (citations omitted); see also Iowa R. App. P. 6.907 (2019).

Discussion

Because Hess was a juvenile at the time of his offenses, Iowa Code section 901.5(13) gave the district court sentencing discretion to depart from statutory sentencing requirements which are mandatory for adults. The sentencing court exercised that discretion by suspending the otherwise mandatory terms of imprisonment triggered by Hess' convictions for sexual abuse in the second degree.[3] However,

[3] Sexual abuse in the second degree is a forcible felony, and but-for application of section 901.5(13) sentencing discretion, a prison sentence is mandatory upon conviction. Iowa Code

the district court failed to recognize that its discretion under section 901.5(13) also applied to the section 903B.1 special sentence and the sex offender registry requirements of chapter 692A.

"[S]entencing decisions of the district court are cloaked with a strong presumption in their favor." Ayers, 590 N.W.2d at 29 (citation omitted). However, "[w]hen a sentencing court has discretion, it must exercise that discretion. Failure to exercise that discretion calls for a vacation of the sentence and a remand for resentencing." Id. at 27 (citations omitted). A sentencing court fails to exercise its discretion if it is unaware it has discretion. Id. at 32. When the sentencing court errs in this way, the remedy is to remand the case for resentencing as to the portion of the sentence for which the court failed to recognize its discretion. See id. at 33 (remanding for resentencing only as to the unrecognized discretionary aspects of appellant's sentence); State v. Lee, 561 N.W.2d 353, 354 (Iowa 1997) (remanding for resentencing only as to imposition

---

§§ 702.11(1); 907.3

of a discretionary fine "since defendant has not challenged the imposition of a term of incarceration.").

Where a sentencing court does not expressly state the boundaries of its discretion, an appellate court may review the record to determine whether the court was aware it had discretion in a given area. See, e.g. Ayers, 590 N.W.2d at 26–27 (reviewing statements by the court and defense counsel); State v. Moore, 936 N.W.2d 436 (Iowa 2019) (reviewing statements by defense counsel about lack of discretion and the court's agreement).

Iowa Code section 901.5(13) reads:

> Notwithstanding any provision in section 907.3 or any other provision of law prescribing a mandatory minimum sentence for the offense, if the defendant, other than a child being prosecuted as a youthful offender, is guilty of a public offense other than a class "A" felony, and was under the age of eighteen at the time the offense was committed, the court may suspend the sentence in whole or in part, including any mandatory minimum sentence, or with the consent of the defendant, defer judgment or sentence, and place the defendant on probation upon such conditions as the court may require.

Iowa Code § 901.5(13) (2019). This code section demonstrates legislative acknowledgement of the fact that

"children are different" for sentencing purposes, and in light of that crucial recognition grants sentencing courts substantial discretion when crafting a sentence for a juvenile convicted in criminal court. State v. Roby, 897 N.W.2d 127, 144 (Iowa 2017) (citation omitted).

Although the district court never referenced section 901.5(13) by name, it clearly understood it had discretion as to otherwise-mandatory prison sentences, and exercised that discretion by placing Hess on probation. Because the section 903B.1 special sentence and chapter 692A sex offender registry are also aspects of Hess' sentence, section 901.5(13) also gave the district court discretion to suspend those requirements. However, the court was unaware it had this discretion.

A. 903B.1 special sentence

Iowa Code section 903B.1 requires that "[a] person convicted of a class "C" felony or greater offense under chapter 709 . . . shall also be sentenced, in addition to any other punishment provided by law, to a special sentence committing

the person into the custody of the director of the Iowa department of corrections for the rest of the person's life, with eligibility for parole as provided in chapter 906." Iowa Code § 903B.1 (2019). The special sentence under 903B.1 "is part of [a defendant's] criminal sentence . . . ." Doss v. State, 961 N.W.2d 701, 710 (Iowa 2021) (citations omitted). Because the 903B.1 special sentence is part of a defendant's sentence for purposes of section 901.5(13), the district court had discretion to suspend that portion of the sentence.

The parties and the district court were unaware the court had this discretion. The prosecutor mischaracterized the special sentence as a collateral consequence during the sentencing hearing, stating "in this scenario the lifetime special sentence is not a punishment. It is part of essential treatment as well as a collateral consequences [sic] to a conviction as charged, but it is not a punishment. We're asking for the lifetime special sentence." (Sentencing Tr. p. 97 L. 24–p. 98 L. 4). See State v. Lathrop, 781 N.W.2d 288, 297 (Iowa 2010) (section 903B.1 special sentence is

punishment, and is part of a criminal sentence). While "asking for" a special sentence could at first glance indicate the prosecutor believed it was discretionary, his statement that that the special sentence was "not a punishment" and was instead a "collateral consequence" reveals his belief that the special sentence falls outside the court's sentencing discretion under section 901.5(13). The district court did not question or disagree with the prosecutor's mischaracterization.

Defense counsel, after discussing the consequences of Hess' case being tried in criminal as opposed to juvenile court, said "[a]nd now, now we're talking about adverse consequences: Registry, zone restrictions, employment restrictions, lifetime parole, all of these adverse consequences. If you defer judgment, Your Honor, there would be no lifetime parole unless there was a formal adjudication." (Sentencing Tr. p. 111 L. 20–25). This statement reveals defense counsel's belief that the only circumstance where Hess would not be subject to the special sentence of lifetime parole would be if he

received a deferred judgment. The district court did not question or disagree with counsel's statements.

When pronouncing sentence, the district court stated "[t]here is a special sentence that applies to this. It's a lifetime special sentence of supervision by the Department of Corrections. That's under Iowa Code 903B.1." (Sentencing Tr. p. 150 L. 7–10). The words "that applies to this" reveal the court's understanding that the special sentence was mandatory and not subject to the court's discretion under section 901.5(13). The written sentencing order appears to be a form; a box is checked next to the words "SPECIAL SENTENCE" and the paragraph that follows says that the section 903B.1 lifetime special sentence "is hereby ordered . . . ." (Sentencing Order p. 2)(App. p. 42). Neither the oral pronouncement of sentence nor the written sentencing order contains any discussion of the court's discretion under section 901.5(13), or any reasoning for imposing the special sentence which would demonstrate the court's understanding that it was discretionary.

While the court never expressly stated that it lacked discretion to suspend the special sentence, the record as a whole demonstrates that the court believed that to be the case. Both the prosecutor and defense counsel made statements implying the special sentence was a mandatory result of Hess' convictions, and the court never questioned or corrected those statements. Furthermore, the court's statement that "there is a special sentence that applies to this," as well as the fact that it never explained why the special sentence was imposed, indicate its belief that it was without discretion to suspend the special sentence. The district court was unaware that section 901.5(13) granted it discretion to suspend the special sentence, and therefore the court failed to exercise its discretion as to that aspect of the sentence.

B. Sex offender registry

Iowa Code section 692A.103(1) mandates that "[a] person who has been convicted of any sex offense classified as a tier I, tier II, or tier III offense . . . shall register as a sex offender as provided in this chapter if the offender resides, is employed, or

attends school in this state." The Iowa Supreme Court has held that this requirement constitutes punishment when applied to juveniles. In re T.H., 913 N.W.2d 578, 596 (Iowa 2018). The requirement is part of Hess' sentence for purposes of section 901.5(13), and may be suspended at the discretion of the sentencing court. The district court was unaware it had that discretion, and therefore erred in failing to exercise its sentencing discretion.

1. Mandatory sex offender registration is punishment as applied to Hess, because he was a juvenile when he committed his offenses.

The term "juvenile" is defined in Black's Law Dictionary as "[s]omeone who has not reached the age (usu. 18) at which one should be treated as an adult by the criminal-justice system." *Juvenile*, Black's Law Dictionary (11th ed. 2019). The juvenile court chapter of the Iowa Code defines "juvenile" synonymously with "child," which in turn is defined as "a person under eighteen years of age." Iowa Code §§ 232.2(5), 232.2(29).

When considering a claim that placing a juvenile on the sex offender registry constituted cruel and unusual punishment, the Iowa Supreme Court in In re T.H. concluded that "mandatory sex offender registration for juvenile offenders is sufficiently punitive to amount to imposing criminal punishment." In re T.H., 913 N.W.2d at 596. The Court reached that conclusion by applying the Mendoza-Martinez factors, derived from the United States Supreme Court case Kennedy v. Mendoza-Martinez and used to determine whether a given consequence constitutes punishment for constitutional purposes. Id. at 588 (quoting Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168–69 (1963)). After analyzing those factors, the Court found three facts led to the conclusion that the sex offender registry is punishment when applied to juveniles:

> The statute imposes an affirmative restraint akin to supervised probation. It mandates the mass dissemination of offender records that are historically kept confidential to promote the juvenile's potential for rehabilitation. And the sheer number of restrictions imposed on juveniles, given the demonstrated low juvenile recidivism rate, is excessive in light of the civil purpose of preventing multiple offenses.

Id. at 596. Although T.H. involved a juvenile whose case was adjudicated in juvenile court, the three factors also apply to Hess, who committed his offenses as a juvenile but was convicted in adult court.

The finding that the registry scheme involves "an affirmative restraint akin to supervised probation," applies with equal force in this case; Hess is subject to the same in-person check-in requirements which led the Court to that conclusion in T.H., as well as the same exclusion zones and employment restrictions.

Regarding publication of juveniles' records, the Court noted that this was contrary to the approach for defendants whose cases are handled in juvenile court because those proceedings are generally confidential, but also noted that under some circumstances (including when a juvenile is prosecuted as an adult) proceedings involving a juvenile are not confidential. Id. at 589–90. However, the Court went on to note that the information posted on the registry website is not "akin to an archive of criminal records," because "[p]osting

of juvenile's personal information, including their full name, date of birth, annual photographs, home address, and physical description—including scars, marks, and tattoos—goes well beyond merely unsealing previously confidential records. The juvenile is publicly branded as deviant on a website known to and accessible by the juvenile's peers." Id. at 592. This is equally true for Hess. Therefore, this factor weighs in favor of a finding that the registry requirement is punitive, because the information made public goes far beyond that which is revealed by a public record of a criminal proceeding.

The Court stated that excessiveness in relation to legislative purpose is "the most significant" factor in determining whether the registry requirement is punitive for juveniles. Id. at 594 (citations omitted). While the registry requirement seeks to address the risk of recidivism, juvenile sex offender recidivism rates are drastically lower than those of adults; one study cited by the Court found that "recidivism for [juvenile] sex offenders fell at 5% to 14%." Id. at 595

(citing Div. of Criminal & Juvenile Justice Planning, Iowa Dep't of Human Rights, *Iowa Sex Offender Research Council Report to the Iowa General Assembly* 12 (2013) (available at https://humanrights.iowa.gov/sites/default/files/media/January%202013%20SORC%20Report.pdf) (last visited August 26, 2021) (hereinafter 2013 SORC Report). The Court noted that "[w]ith respect to the effectiveness of sex offender registration, multiple studies 'have shown *no significant difference* in re-offense rates between registered and non-registered juveniles.'" Id. (citing 2013 SORC Report at 12). The Court also cited an article distinguishing between adult and juvenile sex offenders on the basis that "[j]uvenile offenses . . . 'appear to be more exploratory in nature than those committed by adults and to not signify permanent sexual deviance.'" Id. at 596 (Iowa 2018) (quoting Phoebe Geer, *Justice Served? The High Cost of Juvenile Sex Offender Registration*, 27 Dev. Mental Health L. 34, 42 (2008)). In his partial concurrence, Justice Appel cited numerous scientific studies and academic articles which document the low

likelihood of recidivism among juvenile sex offenders, further demonstrating that the registry is excessive in light of its stated purpose. In re T.H., 913 N.W.2d 578, 601–603 (Iowa 2018) (Appel, J., concurring in part and dissenting in part). The Court concluded that "the totality of the statute's impositions, coupled with the mass publication of the juvenile's personal information" meant that the "mandatory registration for juveniles is excessive in light of [the registry's] nonpunitive purpose." Id. at 596.

Several other states and one federal circuit have also found that sex offender registry schemes constitute punishment, in some cases even as applied to adult offenders. See Does #1–5 v. Snyder, 834 F.3d 696, 705 (6th Cir. 2016); Doe v. State, 189 P.3d 999, 1019 (Alaska 2008); In re T.B., 2021 CO 59, ¶ 58, 489 P.3d 752, 768–69 (Colo. 2021); State v. Williams, 2011-Ohio-3374, ¶¶ 16–20, 952 N.E.2d 1108, 1112–13 (Ohio 2011); Wallace v. State, 905 N.E.2d 371, 384 (Ind. 2009); Commonwealth v. Baker, 295 S.W.3d 437, 447 (Ky. 2009); State v. Letalien, 2009 ME 130, ¶ 62, 985 A.2d 4, 26

(Me. 2009); People v. Betts, --- N.W.2d ----, No. 148981, 2021 WL 3161828, at *15 (Mich. July 27, 2021); Doe v. State, A.3d 1077, 1100 (N.H. 2015); Starkey v. Oklahoma Dep't of Corr., 2013 OK 43, ¶ 77, 305 P.3d 1004, 1030 (Okla. 2013). While there is some variance among these cases, their reasoning largely tracks with that of the Iowa Supreme Court in In re T.H., and they lend further support to the conclusion that registry requirements, at least when applied to juveniles, are punitive in nature. For example, in summarizing its conclusion that Michigan's registry scheme (which involves many of the same requirements as Iowa's) is punitive, and distinct from the Alaska registry scheme previously upheld by the United States Supreme Court, the Sixth Circuit aptly explained:

> A regulatory regime that severely restricts where people can live, work, and "loiter," that categorizes them into tiers ostensibly corresponding to present dangerousness without any individualized assessment thereof, and that requires time-consuming and cumbersome in-person reporting, all supported by—at best—scant evidence that such restrictions serve the professed purpose of keeping Michigan communities safe, is something altogether different from and more troubling than Alaska's first-

> generation registry law. SORA brands registrants as moral lepers solely on the basis of a prior conviction. It consigns them to years, if not a lifetime, of existence on the margins, not only of society, but often, as the record in this case makes painfully evident, from their own families, with whom, due to school zone restrictions, they may not even live. It directly regulates where registrants may go in their daily lives and compels them to interrupt those lives with great frequency in order to appear in person before law enforcement to report even minor changes to their information.

Snyder, 834 F.3d at 705.

The Iowa Supreme Court, like several jurisdictions around the country, has concluded that sex offender registration is punishment when applied to juvenile offenders. The reasoning of T.H. and the cases cited from other jurisdictions is equally applicable to Hess, and the requirement that he register as a sex offender constitutes punishment.

2. Mandatory sex offender registration is an aspect of Hess' sentence for purposes of section 901.5(13), and therefore could be suspended at the discretion of the sentencing court.

Because registration constitutes punishment for juvenile offenders, it is an aspect of the criminal sentence imposed. See Klouda v. Sixth Jud. Dist. Dep't of Corr. Servs., 642

N.W.2d 255, 261 (Iowa 2002) (quoting *Sentence*, Black's Law Dictionary (6th Ed. 1990) ("A sentence is '[t]he judgment formally pronounced by the court or judge upon the defendant after his conviction in a criminal prosecution, imposing the punishment to be inflicted....'"); Cf. State v. Cole, No. 06-0579, 2007 WL 257856, at *2 (Iowa Ct. App. Jan. 31, 2007) (unpublished table decision) (finding, based solely on prior precedent classifying the registry requirement as non-punitive as to adults, the requirement is a collateral consequence which is "not a part of the actual sentence . . . .").

While section 901.5(13) gives courts discretion to "suspend the sentence in whole or in part" in the case of a juvenile defendant, the term "sentence" is undefined in the Iowa Code. See State v. Richardson, 890 N.W.2d 609, 617 (Iowa 2018). In Richardson, the Iowa Supreme Court considered whether the $150,000 restitution requirement

under section 910.3B was a part of the then-section 901.5(14)[4] "sentence" which could be suspended. Id. at 614. The Court ultimately concluded the term did not include restitution because "[r]estitution under chapter 910 is mandatory, may be imposed later, and operates independently from the section 901.5 sentencing options available to a court." Id. at 619. In reaching this conclusion, the Court noted that the preamble of section 901.5 referenced consequences imposed "at the time of 'pronouncement of judgment and sentence,'" that section 901.5(14) applied to consequences "tied to a particular offense or group of offenses," and that other uses of the phrase "mandatory minimum sentence" in the Code referred to restrictions on liberty. Richardson, 890 N.W.2d at 616–19. Unlike section 910.3B restitution, these factors weigh in favor

[4] In 2018, a legislative amendment resulted in renumbering of the section 901.5 subsections. The subsection granting sentencing discretion regarding juvenile offenders is now located at section 901.5(13). The current text of the subsection is identical to that under consideration in Richardson.

of a finding that sex offender registry requirements are part of the "sentence" for section 901.5(13) purposes.

First, while the commencement date of the registry requirements varies depending on whether the individual is sentenced to a term of incarceration, the requirements themselves are triggered "upon a first or subsequent conviction" of a sex offense. Iowa Code § 692A.103(1); see In re J.D.P., No. 10-0115, 2011 WL 441520, at *4 (Iowa Ct. App. Feb. 9, 2011) (unpublished table decision) (registry requirement is triggered upon conviction, even though under some circumstances the obligation to fulfill that requirement is delayed). The registry requirements are therefore ordered "at the time fixed by the court for pronouncement of judgment and sentence" as contemplated by the section 901.5 preamble, unlike restitution requirements which the Richardson Court noted may be imposed later. Iowa Code § 901.5; see Richardson, 890 N.W.2d at 616. The registry requirements were in fact ordered at sentencing in this case. (Sentencing Tr. p. 148 L. 6–7; Sentencing Order p. 2)(App. p. 42).

Second, while 910.3B restitution is "not tied to a particular offense or group of offenses," the registry requirements are tied to a specific group of offenses enumerated in section 692A.102. See Richardson, 890 N.W.2d at 617; Iowa Code § 692A.102.

Third, the registry requirements bear the hallmarks of a mandatory minimum sentence. The requirements are "criminal punishment" when applied to juvenile offenders. In re T.H., 913 N.W.2d at 596. The requirement of "in-person check-ins, employment conditions, and the possibility of electronic monitoring, is strikingly similar to supervised probation," placing "an affirmative restraint on juvenile registrants." Id. at 589. The registry requirements also place numerous restrictions on where Hess may live, work, and loiter. Iowa Code §§ 692A.113, 692A.114(2). All of these requirements are enforced by threat of criminal prosecution. Iowa Code § 692A.111(1). Furthermore, Hess is required to register for life, and may not petition for modification of that requirement for at least five years because he is classified as a

tier III offender; the restriction on his ability to request modification means that he has a mandatory minimum of five years on the registry. See Iowa Code § 692A.128(2)(a). This regime substantially restricts Hess' liberty, and imposes a mandatory minimum length of time that those restrictions must remain in place.

In summary, sex offender registry requirements bear many of the section 901.5(13) "sentence" characteristics which the Richardson Court found lacking with regard to section 910.3B restitution: they are triggered upon pronouncement of judgment and sentence and not later, they are tied to a specific group of enumerated offenses, and they involve a substantial restraint on liberty with a mandatory minimum term of application. Therefore, the sex offender registry requirements are an aspect of Hess' sentence as the term is used in section 901.5(13), and the district court had discretion to suspend them.

3. The district court was unaware of its discretion to suspend the sex offender registry requirements.

During sentencing defense counsel pointed out that, if the case had proceeded in juvenile court, placement on the registry would have been subject to the discretion of the court. (Sentencing Tr. p. 110 L. 11–17, p. 113 L. 22–p. 114 L. 8). But because Hess was in criminal court, counsel stated, "even if this Court grants him a deferred judgment, you still have to place him on the registry according to the law." (Sentencing Tr. p. 110 L. 11–17). Counsel also stated that he had attempted to have the case waived to juvenile court "to avoid the very thing that we're going to have to do, which is place [Hess] on the registry." (Sentencing Tr. p. 111 L. 15–18). Inherent in counsel's statements is the notion that section 901.5(13) discretion did not apply to the registry requirement; the court never questioned or disagreed with this proposition.

The prosecutor's arguments also emphasized that the court was without discretion to suspend the registry requirements. He argued the holding of In re T.H. that the registry is punishment for juveniles did not apply to Hess

because Hess' case was in criminal, rather than juvenile court, and that as a result the registry was a collateral consequence, rather than punishment. (Sentencing Tr. p. 98 L. 8–9, p. 99 L. 3–7, p. 136 L. 6–11). Because Hess was in criminal court, the prosecutor argued, "four convictions for sex abuse in the second degree mandate life registry." (Sentencing Tr. p. 98 L. 18–20). Again, the court never questioned or disagreed with this proposition.

Finally, the court's own language indicates it was unaware it had discretion to suspend the registry requirement. The court expressed its belief that In re T.H. was limited to cases in juvenile court, and therefore that the sex offender registry requirements as applied to Hess were collateral consequences, not punishment. (Sentencing Tr. p. 145 L. 10–p. 146 L. 20). As a result of that belief, the court told Hess that he was "required to sign up for the registry . . . within five days" of the date of sentencing. (Sentencing Tr. p. 148 L. 6–7). The court also stated that, because Hess' offenses were "against minors," Hess was "subject to additional restrictions

that are found in 692A.113." (Sentencing Tr. p. 150 L. 23–15). Hess was also ordered to abide by the sex offender registry requirements in the written sentencing order. (Sentencing Order p. 2)(App. p. 42). At no point did any of the court's statements or actions indicate its belief that it had discretion in imposing the registry requirements.

The district court was unaware that section 901.5(13) granted it discretion to suspend the sex offender registry requirements, and therefore the court failed to exercise its discretion as to that aspect of the sentence.

Conclusion

Because the district court was unaware of its discretion under section 901.5(13) to suspend the special sentence and sex offender registry requirements, it failed to exercise its discretion as to those aspects of Hess' sentence. The case should be remanded for resentencing, solely addressing whether to suspend the special sentence and sex offender registry portions of Hess' sentence, including the mandatory minimum registry term imposed by section 692A.128(2)(a).

II. If this Court concludes the district court had no discretion regarding whether to require Hess to register as a sex offender, that requirement, which imposes a mandatory minimum term of punishment for offenses committed when Hess was a juvenile, constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution and article I, section 17 of the Iowa Constitution.

Preservation of Error

Hess argued in the district court that mandatory lifetime sex offender registration for offenses committed when he was a juvenile constitutes cruel and unusual punishment, the State responded, and the district court ruled on the issue. (Sentencing Hearing p. 116 L. 5–10, p. 117 L. 25–p. 118 L. 3, p. 129 L. 16–p. 131 L. 15, p. 136 L. 6–18, p. 145 L. 10–p. 147 L. 2, p. 152 L. 22–25). Error was preserved. Furthermore, the rules of error preservation do not apply to illegal, unconstitutional sentences. State v. Bruegger, 773 N.W.2d 862, 870–72 (Iowa 2009).

Standard of Review

Constitutional challenges are reviewed de novo. In re T.H., 913 N.W.2d at 582.

Discussion

In State v. Lyle, the Iowa Supreme court held that "juvenile offenders cannot be mandatorily sentenced under a mandatory minimum sentencing scheme." State v. Lyle, 854 N.W.2d 378, 381 (Iowa 2014). For juveniles convicted of a sex offense in criminal court, such a scheme exists—they are required to register upon conviction, and they may not petition for modification of the registry requirement until a set number of years has passed. Iowa Code §§ 692A.103(1), 692A.128(2)(a). If this Court concludes that Iowa Code section 901.5(13) does not provide sentencing discretion with regard to the sex offender registry, the sentencing court has no discretion to alter any aspect of this mandatory minimum sentence out of consideration for the mitigating circumstances of youth. See Lyle, 854 N.W.2d at 404 n. 10 (quoting Miller v. Alabama, 567 U.S. 460, 477 (2012)) (requiring consideration of

"(1) the age of the offender and the features of youthful behavior, such as 'immaturity, impetuosity, and failure to appreciate risks and consequences'; (2) the particular 'family and home environment' that surround the youth; (3) the circumstances of the particular crime and all circumstances relating to youth that may have played a role in the commission of the crime; (4) the challenges for youthful offenders in navigating through the criminal process; and (5) the possibility of rehabilitation and the capacity for change."). Because the registry scheme removes the sentencing court's discretion to consider these factors, imposition of mandatory sex offender registry requirements, including a mandatory minimum term, constitutes cruel and unusual punishment.

The Eighth Amendment to the United States Constitution prohibits the infliction of "cruel and unusual punishments." U.S. Const. amd. VIII. This prohibition applies to the states via the Fourteenth Amendment. Robinson v. California, 370 U.S. 660, 667 (1962). Similarly, article I section 17 of the Iowa Constitution prohibits infliction of "cruel and unusual

punishment." Iowa Const. Art. I § 17. Iowa courts have employed the same standards when evaluating claims of cruel and unusual punishment under both constitutions, but have applied those standards in "a more stringent fashion than federal precedent." State v. Null, 836 N.W.2d 41, 51 (Iowa 2013) (citing Bruegger, 773 N.W.2d at 883–86)); see also Lyle, 854 N.W.2d at 384 (citations omitted).

Juveniles convicted in criminal court of a sex offense classified as an "aggravated offense," as well as those who are subject to a lifetime special sentence, are required to register for life as a sex offender. Iowa Code §§ 692A.106(2) (requiring that the duration of registration must be at least as long as the duration of the special sentence); 903B.1 (mandating a lifetime special sentence for those convicted of "a class 'C' felony or greater offense under chapter 709"); 692A.106(5) (requiring lifetime registration for an offender convicted of "an aggravated offense"); 692A.101(1)(a) (defining various offenses, including sexual abuse in the second degree in violation of section 709.3, as aggravated offenses).

Registrants must periodically report in person to the sheriff's office in their county of residence "to verify residence, employment, and attendance as a student, to allow the sheriff to photograph the offender, and to verify the accuracy of other relevant information . . . ." Iowa Code § 692A.108(1). Registrants are required to pay an annual fee of twenty-five dollars to the sheriff of their county of principal residence, although the sheriff may extend time, allow installment payments, or waive the fee if the registrant cannot pay. Iowa Code § 692A.110(1). Various offenses, including sexual abuse in the second degree in violation of section 709.3(1)(b) committed by a person fourteen years of age or older, result in a "tier III" offender classification.[5] Iowa Code §

[5] The version of section 709.3(1)(b) in effect at the time of Hess' offenses (either the 2015 or 2017 Iowa Code, since the offense dates were between 2016 and 2018) applied to sexual abuse in the second degree against a person under 12 years old. The district court did not specifically invoke section 709.3(1)(b) in its finding of guilt or dispositional order. However, the court did invoke section 709.1(3), which defines sexual abuse as a sex act performed with a child; section 709.3(2), which classifies sexual abuse in the second degree as a class B felony; and made findings of fact that Hess was between 15 and 17 years old when the offenses occurred and

692A.102(1)(c). Tier III offenders must report to the sheriff every three months. Iowa Code § 692A.108(1)(c). The sheriff has discretion to make sex offenders report more frequently "if good cause is shown." Iowa Code § 692A.108(2).

Information about convicted sex offenders is made available to the public via a website, which is searchable by both registrant name and geographic location. Iowa Code § 692A.121(1). The information made public includes the registrant's name, nickname, and any aliases and ethnic or tribal names; date of birth; a photograph of the registrant; a physical description including scars, marks, or tattoos; the registrant's home address; the offense of conviction requiring registration; whether the registrant is subject to residency restrictions; and whether the registrant is subject to exclusion zone restrictions. Iowa Code § 692A.121(2)(b)(1).

Registrants convicted of a sex offense against a minor are

---

that both victims were under 12 years old. (Written Verdict pp. 4–7; Dispositional Order p. 1)(App. 33-36, 41). As a result, although the specific code section referenced in section 692A.102(c)(10) was not invoked, all of the factual requirements for tier III classification were met.

subject to numerous restrictions on where they may live, work, and loiter. Iowa Code §§ 692A.113, 692A.114(2).

An offender who fails to comply with any of the registry requirements "commits an aggravated misdemeanor for a first offense and a class "D" felony for a second or subsequent offense." Iowa Code § 692A.111(1).

A registrant may "file an application in district court seeking to modify the registration requirements . . . ." Iowa Code § 692A.128(1). However, the registrant must meet several requirements to be eligible for modification, including that two years have passed since they requirement to register began (in the case of tier I offenders) or that five years have passed since the requirement began (in the case of tier II or III offenders). Iowa Code § 692A.128(2)(a)–(e). These time-based prohibitions create a mandatory minimum registry term of either two or five years. This mandatory minimum term applies without any consideration of the offender's status as a juvenile at the time of offense.

A. Mandatory registration for offenses committed by juveniles is punishment.

As outlined above in section I(B)(1) and incorporated here by reference, the requirements of the sex offender registry are punishment when applied to juveniles. The requirements place numerous restrictions on the registrant's liberty, mandate publication of information about the registrant which goes beyond what can be found in a public court record and forever brands the registrant as a deviant, and most importantly are vastly excessive in light of the legislative purpose. See In re T.H., 913 N.W.2d at 596. As listed above, several states and one federal circuit have similarly concluded that the sex offender registry requirements are punishment. Sex offender registry requirements are punishment when applied to juveniles.

B. Mandatory sex offender registration, with a mandatory minimum term, is cruel and unusual when applied to juveniles.

Analysis of a categorical claim of cruel and unusual punishment involves a two-step inquiry: first, the reviewing court will consider whether a national consensus against the

sentencing practice exists, evaluating "objective indicia of society's standards, as expressed in legislative enactments and state practice." Lyle, 854 N.W.2d at 386. Second, regardless of whether a national consensus exists, the court will evaluate the sentencing practice using its own independent judgment "guided by the standards elaborated by controlling precedents and by [the court's] own understanding and interpretation of the [Iowa Constitution's] text, history, meaning and purpose.'" Id. (quoting Graham v. Florida, 560 U.S. 48, 61 (2010))(second alteration in original).

1. National Consensus

Although the national consensus test calls for consideration of legislative enactments, that consideration is problematic in the context of sex offender registry schemes because the federal Sex Offender Registration and Notification Act mandates state adoption of those schemes under threat of reduced federal funding. See 34 U.S.C. § 20927(a) (2018). This calls into question whether the existence of state laws requiring registration for offenses committed by juveniles

represents endorsement, or merely acquiescence.

Because of that issue, state practice is far more illustrative, and indicates there is national consensus against mandatory juvenile registration. The Supreme Court of Ohio, in finding the juvenile registration requirement under its statutory scheme constituted cruel and unusual punishment, observed that the federal requirement to register juveniles resulted in widespread resistance among the states, which in turn prompted the United States attorney general to ease some of the requirements pertaining to juveniles. In re C.P., 2012-Ohio-1446, ¶¶ 30–37, 967 N.E.2d 729, 738–39 (Ohio 2012). The Ohio Court observed that "[i]n releasing the Supplemental Guidelines, the attorney general noted that one of the largest barriers to compliance by states was the fact that 'SORNA includes as covered 'sex offender[s]' juveniles at least 14 years old who are adjudicated delinquent for particularly serious sex offenses.'" Id. at 738 (quoting Supplemental Guidelines for Sex Offender Registration and Notification, 76 Fed.Reg. 1630, 1636 (Jan. 11, 2011)). The Court also pointed out that "[a]n

April 2009 50–state survey on SORNA conducted by the National Consortium for Justice Information and Statistics stated that '[t]he most commonly cited barrier to SORNA compliance was the act's juvenile registration and reporting requirements, cited by 23 states.'" Id. (quoting National Consortium for Justice Information and Statistics, Survey on State Compliance with the Sex Offender Registration and Notification Act (SORNA) (2009) p. 2 (available at https://www.search.org/files/pdf/SORNA-StateCompliance Survey2009Rev071609.pdf, last visited August 26, 2021)).

The Colorado Supreme Court also recently concluded that there is national consensus against mandatory lifetime sex offender registration for juveniles (and ultimately that mandatory registration for juveniles constitutes cruel and unusual punishment). In In re T.B., the Colorado Court took stock of registry statutes around the country and found that "[f]ewer than a third of our sister states have laws providing for mandatory lifetime sex offender registration of juveniles." In

re T.B., 2021 CO 59, ¶ 61, 489 P.3d 752, 769 (Colo. 2021) (footnote omitted).

In fairness, it is difficult to make one-to-one jurisdictional comparisons on this issue because much depends on the interplay between a given jurisdiction's juvenile and criminal schemes, particularly the circumstances under which juveniles may be prosecuted in criminal court. However, in Miller, the United States Supreme Court rejected the argument that the existence of direct-file and reverse-waiver options can substitute for the discretion required in juvenile sentencing:

> In *Thompson,* we found that the statutes [allowing certain juvenile offenses to be prosecuted in criminal court] "t[old] us that the States consider 15–year–olds to be old enough to be tried in criminal court for serious crimes (or too old to be dealt with effectively in juvenile court), but t[old] us nothing about the judgment these States have made regarding the appropriate punishment for such youthful offenders."

Miller, 567 U.S. at 485 (quoting Thompson v. Oklahoma, 487 U.S. 815, 826 n. 24 (plurality opinion); citing Thompson, 487 U.S. at 850 (O'Connor, J., concurring in judgment); Roper, 543 U.S. at 596, n. (O'Connor, J., dissenting)) (second and

third alterations in original). The Court pointed out that "[e]ven when States give transfer-stage discretion to judges, it has limited utility" because those decisions are frequently made based upon limited information and "often present a choice between extremes: light punishment as a child or standard sentencing as an adult," and thus "the discretion available to a judge at the transfer stage cannot substitute for discretion at post-trial sentencing in adult court—and so cannot satisfy the Eighth Amendment." Miller, 567 U.S. at 488–89. Thus, although procedures regarding prosecution of juveniles in adult court vary among jurisdictions, those procedures do not negate the national consensus against mandatory sex offender registration for juveniles.

2. Independent Judgment

The United States Supreme Court has stated that national consensus "is not itself determinative of whether a punishment is cruel and unusual," and that the task of evaluating the constitutionality of a given sentencing practice remains the reviewing court's responsibility. Graham, 560

U.S. at 67 (citing Kennedy v. Louisiana, 554 U.S. 407, 434; Roper v. Simmons, 543 U.S. 551, 575 (2005)). The Iowa Supreme Court has also acknowledged that consensus alone is not dispositive of any inquiry regarding the fundamental rights of Iowans:

> We . . . recognize that we would abdicate our duty to interpret the Iowa Constitution if we relied exclusively on the presence or absence of a national consensus regarding a certain punishment. Iowans have generally enjoyed a greater degree of liberty and equality because we do not rely on a national consensus regarding fundamental rights without also examining any new understanding.

Lyle, 854 N.W.2d at 387. In exercising independent judgment, courts consider "controlling precedents" and the "text, history, meaning and purpose" of the constitutional text. Id. (citing Graham, 560 U.S. at 61). Courts also "consider 'the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question,'" as well as whether "the sentencing practice being challenged serves the legitimate goals of punishment." Id. (quoting and citing Graham, 560 U.S. at 67).

a. Precedent and Constitutional Text, History, and Meaning

"[O]ur concept of cruel and unusual punishment is 'not static.'" Lyle, 854 N.W.2d at 384 (quoting Trop v. Dulles, 356 U.S. 86, 101 (1958)). Rather, courts must "consider constitutional challenges under the 'currently prevail[ing]' standards of whether a punishment is 'excessive' or 'cruel and unusual.'" Id. (quoting Atkins v. Virginia, 536 U.S. 304, 311 (2002) (alteration in original)). This is the case because the evaluation "necessarily embodies a moral judgment" which might change over time "as the basic mores of society change." Id. (quoting Kennedy v. Louisiana, 554 U.S. 407, 419 (2008)). "[P]unishments once thought just and constitutional may later come to be seen as fundamentally repugnant to the core values contained in our State and Federal Constitutions as we grow in our understanding over time." Id. (citing Roper, 543 U.S. at 574–75).

"[C]hildren and juveniles have been viewed as constitutionally different from adults in this country for more than a century." Lyle, 854 N.W.2d at 390. Although "[f]or

the first hundred years or so after the founding of the United States, juveniles, if they were tried at all, were tried in adult courts," reforms which began in the late nineteenth century resulted in the establishment of juvenile court systems "less concerned with ascertaining the child's guilt or innocence and more concerned with determining what was in the child's best interests based upon the child's unique circumstances." Id. (internal quotations and citations omitted). Those reforms stalled in the mid-twentieth century, in part due to state legislatures "amending their laws to prosecute more juveniles as adults in adult court and to give more juveniles adult sentences." Id. (citing Martin Guggenheim, Graham v. Florida *and a Juvenile's Right to Age-Appropriate Sentencing*, 47 Harvard C.R.-C.L. L. Rev. 457, 466–74 (2012); Donna M. Bishop, *Juvenile Offenders in the Adult Criminal Justice System*, 27 Crime & Just. 81, 84 (2000)).

In the late twentieth century, the United States Supreme Court recognized in a series of decisions that juveniles are categorically different from adults and that criminal justice

approaches must take those differences into account. See Lyle, 854 N.W.2d at 390–93 (citing Johnson v. Texas, 509 U.S. 350, 367 (1993); Thompson v. Oklahoma, 487 U.S. 815, 836–38 (1988); Schall v. Martin, 467 U.S. 265–67 (1984); Eddings v. Oklahoma, 455 U.S. 104, 115–16 (1982)). "*Eddings* and *Thompson* demonstrate that while our emerging knowledge of adolescent neuroscience and the diminished culpability of juveniles is indeed compelling, our commonsense understanding of youth, or what any parent knows, has for more than thirty years supported a fundamental and virtually inexorable difference between juveniles and adults for the purposes of punishment." Lyle, 854 N.W.2d at 393.

Until 2010, there were "two general classifications of cruel and unusual sentences"—those which imposed a sentence which "is unconstitutionally excessive" or "grossly disproportionate" in light of the circumstances of the offense, and those imposing the death penalty without regard to either the nature of the offense committed or the characteristics of the individual offender. Id. at 385 (citing Graham, 560 U.S.

at 59–60; Bruegger, 773 N.W.2d at 873). But in 2010 the United States Supreme Court, building upon its prior recognition that "juveniles have lessened culpability" and therefore are "less deserving of the most severe punishments," held that juveniles categorically cannot be sentenced to life without parole for nonhomicide offenses. Graham, 560 U.S. at 68, 75–79 (citing Roper, 543 U.S. at 569). "The Court thus blended its two prior subsets of categorical challenges—consideration of the nature of the crime and consideration of the culpability of the offender—to generate a new subset." Lyle, 854 N.W.2d at 385.

The Court continued to build on this subset of cruel and unusual punishment analysis two years later, holding that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" Miller v. Alabama, 567 U.S. 460, 465 (2012). Miller expanded the holding of Graham to include even homicide offenses because "none of what [Graham] said about children—about their

distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific." Id. at 473. Mandatory punishment schemes, the Court explained, "prevent the sentencer from taking account of these central considerations" and required the sentencing court to "proceed as though [the defendants] were not children." Id. at 474.

In Lyle, the Iowa Supreme Court held that the lessons of Roper, Graham, and Miller extend to all mandatory minimum sentences imposed upon juveniles. The Court concluded that "a mandatory minimum sentencing schema . . . violates article I, section 17 of the Iowa Constitution when applied in cases involving conduct committed by youthful offenders." Lyle, 854 N.W.2d at 402. The Court powerfully stated that the reasoning of Miller, as well as the Iowa cases State v. Null and State v. Pearson which had interpreted Miller, "applies to even a short sentence that deprives the district court of discretion in crafting a punishment that serves the best interests of the child and of society. The keystone of our reasoning is that youth and its attendant circumstances and attributes make a

broad statutory declaration denying courts this very discretion categorically repugnant to article I, section 17 of our constitution." Id. (footnotes omitted).

The Iowa Supreme Court has examined the application of juvenile sentencing principles to sex offender registry requirements on two prior occasions, and in each instance concluded that the practice does not amount to cruel and unusual punishment. However, both of those cases can be distinguished from the case at bar.

In State v. Graham, the Court denied the appellant's challenge, noting precedent which held "at least as applied to adults, lifetime sex offender registration was not punitive . . . ." State v. Graham, 897 N.W.2d 476, 489 (Iowa 2017) (citing State v. Seering, 701 N.W.2d 655, 669 (Iowa 2005) (superseded by statute on other grounds by 2009 Iowa Acts ch. 119, § 3 (codified at Iowa Code § 692A.103 (Supp. 2009); State v. Pickens, 558 N.W.2d 396, 400 (Iowa 1997)). However, that precedent has been altered by the Court's holding that sex offender registration is punitive when applied

to juveniles. In re T.H., 913 N.W.2d at 596. Additionally, Graham's challenge in district court focused exclusively on the 2,000-foot residency restriction, rather than the registry scheme as a whole, and the Court denied relief on the basis that Graham had failed to demonstrate the impact the restriction had on him. Graham, 897 N.W.2d at 489. In this case, on the other hand, Hess argued that mandatory sex offender registration (with all of the attending circumstances and restrictions triggered thereby), with a mandatory minimum term imposed and without any consideration of Hess' status as a juvenile, constitutes cruel and unusual punishment under juvenile sentencing precedents. Thus, Graham is inapplicable to the case at bar, because its reliance on authority that registry requirements are not punishment has been altered with respect to juveniles, and because it involved a challenge to a specific aspect of the registry, rather than a challenge to application of the registry requirements as a whole, including a mandatory minimum term, to a juvenile offender.

More recently, In re T.H. found that, while the sex offender registry is punishment when applied to juveniles, it is not cruel and unusual punishment when triggered by a juvenile court proceeding because juvenile court procedures sufficiently address the differences between juvenile and adult offenders. In re T.H., 913 N.W.2d at 597. In juvenile proceedings, the court has discretion whether to require the juvenile to register as a sex offender unless the juvenile was fourteen or older at the time of offense and the offense was "committed by force or the threat of serious violence, by rendering the victim unconscious, or by involuntary drugging of the victim." Iowa Code § 692A.103(3)–(4). Even in cases where the court has no discretion about whether to impose the registry requirement at the outset, if the juvenile requests that their dispositional order be terminated early and the court grants that request, the court is required to determine whether the juvenile should remain on the registry following termination. Iowa Code § 232.54(1)(i); In re T.H., 913 N.W.2d at 584. The juvenile may request termination of the

dispositional order "[a]t any time prior to its expiration." Iowa Code § 232.54(1). Therefore, for juvenile offenders whose cases are handled in juvenile court, there is no mandatory minimum term of sex offender registration imposed even in cases where the registry is mandatory upon sentencing.

That discretion does not exist for defendants like Hess, whose offenses were committed as a juvenile but were adjudicated in criminal court. If the district court has no discretion under section 901.5(13) to suspend the registry requirements, a mandatory minimum term of either two or five years on the registry is required before the offender may request modification, with no opportunity for the sentencing court to exercise its discretion as to that requirement. Iowa Code § 692A.128(2)(a). The sentencing court is prevented from exercising its duty to consider the mitigating circumstances of youth prior to imposing a minimum term of punishment, in violation of the core principle announced in Lyle that "juvenile offenders cannot be mandatorily sentenced

under a mandatory minimum sentencing scheme." See Lyle, 854 N.W.2d at 380–81.

b. Culpability of juvenile offenders and severity of punishment

"A child's age is far more than a chronological fact. It is a fact that generates commonsense conclusions about behavior and perception. Such conclusions apply broadly to children as a class. And, they are self-evident to anyone who was a child once himself, including any police officer or judge." J.D.B. v. North Carolina, 564 U.S. 261, 272 (2011) (internal quotations and citations omitted). A multitude of articles and studies have explored the scientific and psychological bases for concluding that juveniles are less culpable for their actions than adults. See e.g. Elizabeth Cauffman et al., *How Developmental Science Influences Juvenile Justice Reform*, 8 U.C. Irvine L. Rev. 21, 23–27 (2018); Amy E. Halbrook, *Juvenile Pariahs,* 65 Hastings L. J. 1, 8–10 (2013); Barry C. Feld, *Unmitigated Punishment: Adolescent Criminal Responsibility and LWOP Sentences*, 10 J. L. & Fam. Stud. 11, 45–61 (2007); Laurence Steinberg & Elizabeth S. Scott, *Less*

Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1000, 1011–15 (2003); Elizabeth Cauffman & Laurence Steinberg, *The Cognitive and Affective Influences on Adolescent Decision-Making*, 68 Temp. L. Rev. 1763, 1770–89 (1995).

This understanding that "children are different" has permeated the decisions of the both United States and Iowa Supreme Courts regarding juveniles. See Null, 836 N.W.2d at 71 ("[T]he notions in *Roper*, *Graham*, and *Miller* that 'children are different' and that they are categorically less culpable than adult offenders apply as fully in this case as any other.").

Because juveniles are categorically less culpable, the lessons of these cases are not "crime specific," but rather "the notions that juveniles have less-developed judgment, that juveniles are more susceptible to peer pressure, and that juveniles' characters are not fully formed applies to" every case "involving a juvenile defendant." Id. See also State v. Pearson, 836 N.W.2d 88, 98 (Iowa 2013) (Cady, C.J.,

concurring specially) ("[L]imiting the teachings and protections of these recent cases to only the harshest penalties known to law is as illogical as it is unjust."); Elizabeth Scott et al., *Juvenile Sentencing Reform in a Constitutional Framework*, 88 Temp. L. Rev. 675, 707 (2016) ("The principle that 'children are different' has implications for sentencing of juveniles that go well beyond restrictions on the death penalty and [life without parole] . . . [i]n short, the 'children are different' principle should inform policies regulating the sentencing of juveniles whenever they are dealt with in the adult system.").

Turning to severity of punishment, sex offender registry requirements have a massive impact on registrants' lives which, as discussed above in section I(B)(1), far exceeds the purpose of the statutory scheme. The registrant must pay an annual fee; must periodically report in person to the sheriff's department; must promptly notify the sheriff of any changes in residence, employment, attendance as a student, and temporary lodging of more than five days; must have their personal information made available to the public via the

internet; and in cases involving an offense committed against a minor, must comply with numerous restrictions on where they can live, work, and loiter. Iowa Code §§ 692A.104 (requirement to register in person with the sheriff and promptly update information when changes occur), 692A.105 (requirement to report temporary lodging), 692A.110(1) (annual registration fee), 692A.113 (exclusion zones), 692A.114(2) (residency restriction), 692A.121(1) (registry website). Failure to comply with any of these requirements subjects the registrant to criminal prosecution. Iowa Code § 692A.111(1). While different from incarceration, these requirements nonetheless constitute onerous and severe punishment when applied to juvenile offenders.

c. Whether the practice serves the legitimate goals of punishment

There are four generally recognized goals of punishment: retribution, deterrence, incapacitation, and rehabilitation. Graham, 560 U.S. at 71 (citing Ewing v. California, 538 U.S. 11, 25 (2003)). "[T]he sentencing of juveniles according to statutorily required mandatory minimums does not adequately

serve the legitimate penological objectives in light of the child's categorically diminished culpability." Lyle, 854 N.W.2d at 398 (citing Graham, 560 U.S. at 71–75)).

This is especially true with regard to mandatory minimum sex offender registry requirements, which do not serve the rehabilitation purpose which "is the primary consideration in the juvenile sentencing context 'due to the increased capacity of juveniles to reform in comparison to adults.'" See State v. Harrison, 914 N.W.2d 178, 201 (Iowa 2018) (quoting State v. Zarate, 908 N.W.2d 831, 847 (Iowa 2018)). The Iowa Supreme Court has acknowledged that registry requirements fail to serve rehabilitative goals, noting that "multiple studies 'have shown *no significant difference* in re-offense rates between registered and non-registered juveniles.'" In re T.H., 913 N.W.2d at 595 (citing 2013 SORC Report at 12). In fact, registry requirements have a *negative* impact on rehabilitation, because they "impose stigmas and create barriers that are likely to further impede efforts to rehabilitate a juvenile sex offender and, ironically, have the

ultimate effect of placing society at greater risk." Phoebe Geer, Justice Served? The High Cost of Juvenile Sex Offender Registration, 27 Dev. Mental Health L. 34, 51 (2008); see also In re C.P., 2012-Ohio-1446, ¶¶ 54–57, 967 N.E.2d at 743–44 (listing the harm registration requirements do to registrants' ability to reintegrate into the community and concluding "that the social and economic effects of automatic, lifetime registration and notification, coupled with an increased chance of reoffense, do violence to the rehabilitative goals of the juvenile court process."). Rehabilitation, the most important penological goal when dealing with juveniles, is not served by—and is in fact harmed by—mandatory sex offender registration.

Additionally, the penological goal of deterrence is less applicable to juveniles, because "the same characteristics that render juveniles less culpable than adults suggest . . . that juveniles will be less susceptible to deterrence." Graham, 560 U.S. at 72 (quoting Roper, 543 U.S. at 571). This is certainly the case with regard to registry requirements, which have been

observed to have no deterrent effect on juveniles. Elizabeth J. Loterneau et al., *Juvenile Registration and Notification Policy Effects: A Multistate Evaluation Project* 31 (2018) (available at https://www.ojp.gov/pdffiles1/ojjdp/ grants/251494.pdf) (last visited August 26, 2021).

In summary, constitutional text, meaning, and purpose, along with precedential developments in recent years, lead to the conclusion that juveniles who become involved in the criminal justice system must be treated differently than adults, both as to sentencing practices generally and mandatory minimum sentences specifically. This is so because "children are different," in that they have not yet reached the stages of neurological and psychological development that would justify holding them morally culpable in the same manner as adults. In spite of that difference, Iowa Code chapter 692A imposes severe punishment on juveniles who commit sex offenses and are adjudicated in criminal court, including a mandatory minimum term of registration. This statutory scheme fails to serve the

traditional penological goals of punishment, particularly the most important goal of all for juvenile offenders: rehabilitation. Mandatory sex offender registration, with a mandatory minimum term, is cruel and unusual punishment when imposed upon those who were convicted of committing sex offenses as juveniles.

Conclusion

Iowa Code chapter 692A imposes mandatory sex offender registry requirements on juveniles whose cases are adjudicated in criminal court, and imposes a mandatory minimum term during which the registrant cannot request modification of those requirements. Those requirements constitute punishment. If the discretionary juvenile sentencing authority of section 901.5(13) does not apply to the sex offender registry requirements, a mandatory minimum registry term is imposed without consideration of the mitigating circumstances of youth. Lyle forbids the imposition of mandatory minimum punishment without consideration of those circumstances. Therefore, if section

901.5(13) discretion does not apply, then such a sentence constitutes cruel and unusual punishment under the Eighth Amendment to the United States Constitution and article I section 17 of the Iowa Constitution. The portion of Hess' sentence requiring mandatory sex offender registration and a mandatory minimum term of registration should be vacated, and the case should be remanded for a hearing in which the sentencing court must consider the mitigating circumstances of youth outlined in Lyle prior to deciding whether to impose the registry requirements as a whole or the mandatory minimum term that must be served before requesting modification.

REQUEST FOR ORAL ARGUMENT

Counsel requests to be heard in oral argument.

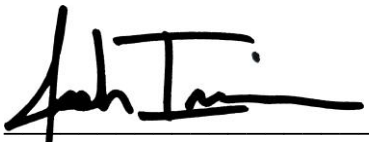
ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $9.90, 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 FOR BRIEFS

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 11,643 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).



Dated: 12/14/21

Josh Irwin
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
jirwin@spd.state.ia.us
appellatedefender@spd.state.ia.us