

IN THE SUPREME COURT OF IOWA
Supreme Court No. 18-1892

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TRAVIS BOYER,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR MILLS COUNTY
THE HONORABLE JAMES S. HECKERMAN, JUDGE

APPELLEE'S BRIEF

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FINAL

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Boyer Did Not Preserve Error on His Challenge to the Order Approving Room and Board Reimbursement and the District Court Did Not Abuse Its Discretion When It Imposed a Civil Judgment.

Authorities

State v. Alspach, 554 N.W.2d 882 (Iowa 1996)
State v. Abrahamson, 696 N.W.2d 589 (Iowa 2005)
Jefferson v. Iowa Dist. Court for Scott Cty., 926 N.W.2d 519, (Iowa 2019)
Meier v. Senecaut, 641 N.W.2d 532 (Iowa 2002)
State v. Clay, 824 N.W.2d 488 (Iowa 2012)
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Iowa Code § 910.7
Iowa Code § 815.10(1)(a)
Iowa R. Crim. P. 2.28(1)

II. The District Court's Decision to Enter a Civil Judgment Under Iowa Code Section 356.7 Did Not Deny Boyer Due Process.

Authorities

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Bowers v. Polk Coun, ty. Bd. Of Supervisors, 638 N.W.2d 682 (Iowa 2002)

State v. Hernandez-Lopez, 639 N.W.2d 226 (Iowa 2002)

State v. Clay, 824 N.W.2d 488 (Iowa 2012)

State v. Jenkins, 788 N.W.2d 640 (Iowa 2010)

State v. Quijas, No. 17-1043, 2018 WL 3654845

(Iowa Ct. App. Aug. 1, 2018)

Iowa Code § 910.7

Iowa R. Civ. P. 1.904(2) and (3)

Iowa R. Civ. P. 1.904(3)

ROUTING STATEMENT

This case can be decided based on existing legal principles.

Transfer to the Court of Appeals would be appropriate. Iowa R. App.

P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

Travis Boyer appeals the district court's order requiring him to pay a civil judgment for room and board reimbursement. The Honorable James S. Heckerman entered the civil judgment in Mills County District Court. The issues in the appeal are whether the district court erred in entering a civil judgment for the cost of room and board reimbursement to the Mills County Jail and whether the court denied Boyer due process.

Course of Proceedings

The State accepts the defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

When Boyer entered his guilty plea, he stipulated to the Minutes of Testimony to establish the factual basis. Plea Tr. p. 8, line 9 through p. 9. The Minutes establish that A. F. was sixteen years old on the night of July 4, 2014. A.F. Minute; Conf. App. 4-6. A. F. spent the evening of July 4th, 2014, at the house of a friend, K.T. A.F. Minute; Conf. App. 4-6. A.F. and K.T. snuck out of the house and got into a truck with K.T.'s boyfriend at the time, T.M., and his cousin, Travis Boyer. A.F. Minute; Conf. App. 4-6.

During the course of the evening, Boyer sexually assaulted A.F. at a campground outside of Glenwood, Iowa. A.F. Minute; Conf. App. 4-6. While K.T. and T.M. were in the truck, A.F. walked to a bench near a lake. A.F. Minute; Conf. App. 4-6. Boyer grabbed A.F., pulled her into a shelter, sat down on a picnic table, and pulled down his pants. A.F. Minute; Conf. App. 4-6. He told A.F. to do the same. A.F. Minute; Conf. App. 4-6. When she did not, he pulled down A.F.'s pants and sat her on his penis and sexually assaulted her. A.F. Minute; Conf. App. 4-6.

ARGUMENT

I. Boyer Did Not Preserve Error on His Challenge to the Order Approving Room and Board Reimbursement and the District Court Did Not Abuse Its Discretion When It Imposed a Civil Judgment.

Preservation of Error

Boyer argues that he was not required to preserve error on his claim that the district court erred when it approved the room and board reimbursement claim without determining he had the reasonable ability to pay it. Boyer claims he did not have an “opportunity” to object. He also asserts that the rules of error preservation do not apply to illegal sentences. Neither suffices to save his claim.

Boyer was required to request a hearing within 20 days as set forth in the order or file a motion under rule 1.904(2) seeking to enlarge the district court’s findings to preserve his claim that it failed to find him reasonably able to pay. *See Meier v. Senecaut*, 641 N.W.2d 532, 539 (Iowa 2002) (Rule 1.904(2) motion is necessary to preserve error when district court fails to resolve an issue). Because he failed to make an appropriate record preserving the alleged error, it is not preserved. *Meier*, 641 N.W.2d at 539.

The illegal sentence exception to the rules of error preservation does not apply to the district court's order. The order approving the room and board claim is a collateral civil judgment, not part of Boyer's sentence. *See State v. Quijas*, No. 17-1043, 2018 WL 3654845, at *2 (Iowa Ct. App. Aug. 1, 2018). As such, the claim is not preserved.

Standard of Review

In *State v. Abrahamson*, this Court interpreted the "shall approve" language in Iowa Code section 356.7 as a "grant of authority to resolve the merits of the claim-not a mandate that [the district court] simply sign the order as a ministerial function." 696 N.W.2d 589, 593 (Iowa 2005). In other words, the district court must exercise its "sound judgment, practical sagacity, and wise discretion" in determining whether to approve the claim. *Id.* Such decisions are reviewed for abuse of that discretion. Constitutional challenges, such as claims of ineffective assistance of counsel, are reviewed de novo. *State v. Clay*, 824 N.W.2d 488, 494 (Iowa 2012).

Merits

Iowa Code section 356.7 permits the county sheriff to file a reimbursement claim with the clerk of the district court for room and

board and other costs while a defendant convicted of a criminal offense was in custody with the county. A claim under that provision can be pursued, established, and enforced either as a civil judgment under chapter 626, or as a part of the restitution order. On appeal, Boyer treats the room and board claim as a part of his restitution. It is not.

If the sheriff wants to enforce a judgment under chapter 910, section 356.7(2)(i) requires the sheriff or the county attorney to explicitly request that the room and board claim be included in the order of payment of restitution. If they do not, they “elect” to enforce the claim as a civil judgment under chapter 626. *See Abrahamson*, 696 N.W.2d at 592 (“Because the sheriff did not elect to collect the claim for room and board under the chapter 626 alternative, but rather treated them as claims for restitution under chapter 910 and the defendants received a full hearing on the restitution claim, it is not necessary for us to consider the argument that the ‘shall approve’ language of the statute renders it invalid. Nevertheless, we do so to provide guidance in those cases in which a sheriff requests court approval of a claim as a condition precedent to collection of it under

the regular judgment collection provisions of chapter 626, rather than through restitution.”).

Because neither the sheriff nor the county attorney requested that the \$4680 in room and board fees be included in the restitution plan, the district court’s order approving the claim is a civil judgment enforceable under chapter 626, not restitution.¹ As a result, the district court was not required to determine Boyer’s reasonable ability to pay pursuant to section 910.2(1). Rather, *Abrahamson* requires only that the district court resolve the merits of the claim rather than rubber-stamping the application. 696 N.W.2d at 593. This Court can presume that the district court was aware of its duty under *Abrahamson*. Because nothing in the record suggests that the district court did not exercise its discretion when it approved the claim and Boyer did not request a hearing, the order should be affirmed.

¹ A reimbursement claim under section 356.7 could be filed as a separate civil action, even where the sheriff elects to enforce the claim as restitution. Iowa Code § 356.7. Experience suggests that these claims are commonly filed in the criminal case, as was the instant claim. The State believes that the best practice—and one that would lead to significantly less confusion about the district court’s duty—would be to file reimbursement claims as separate civil actions regardless whether the sheriff elects to enforce the judgment under chapter 626 or as restitution.

Recently, the Iowa Court of Appeals rejected an identical claim in *State v. Gross*, No. 18-0690, 2019 WL1752670, at *2 (Iowa Ct. App. Apr. 17, 2019). In *Gross*, the defendant challenged the district court’s civil judgment order requiring him to pay \$11,415 to the Polk County Sheriff for room and board expenses. *Id.* at *1. The defendant in *Gross* also alleged that the court erred in failing to determine whether he had the reasonable ability to pay the room and board claim. *Id.* the Court of Appeals rejected the claim and found:

Neither the claim by the sheriff nor the ruling by the district court mentions restitution. Based on section 356.7(2)(i), we find the sheriff was seeking to enforce its claim for reimbursement under chapter 626. Where a sheriff proceeds under chapter 626, the court has “inherent discretionary authority to review any order. . . for substantive, as well as procedural, irregularity, and to set the matter for hearing where necessary.”

Id. at *2 (citing *Abrahamson*, 696 N.W.2d at 592). The district court concluded that the court did not err in entering the civil judgment without determining whether the defendant had the reasonable ability to pay.

As in *Gross*, the sheriff’s request did not specifically request restitution. Room and Board Reimbursement Claim (10/5/18); App. 9. The district court in this case, like the court in *Gross*, treated this

as a civil judgment. *Gross*, 2019 WL1752670, at *2. The district court committed no error in doing so.

Finally, Boyer argues that if the court finds that he failed to preserve the issue for appeal, counsel was ineffective. Def. Brief at 18. Aside from setting out the standard for ineffective assistance and making the most minimal argument, Boyer fails to consider that he does not have the right to counsel in this instance. If there is no right to counsel, counsel cannot be deemed ineffective.

Under Iowa Rule of Criminal Procedure 2.28(1):

Every defendant who is an indigent person as defined in Iowa Code section 815.9 is entitled to have counsel appointed to represent the defendant at every stage of the proceedings from the defendant's initial appearance before the magistrate or the court through appeal, including probation revocation hearings, unless the defendant waives such appointment.

Iowa R. Crim. P. 2.28(1). Additionally, Iowa Code section 815.10 states:

The court, for cause and upon its own motion or upon application by an indigent person or a public defender, shall appoint the state public defender's designee pursuant to section 13B.4 to represent an indigent person at any stage of the criminal, postconviction, contempt, commitment under chapter 229A, termination under chapter 600A, detention under section 811.1A, competency under chapter 812, parole revocation if applicable under section 908.2A, or juvenile proceedings or on appeal of any criminal, postconviction, contempt, commitment under chapter 229A, termination under chapter 600A, detention under section

811.1A, competency under chapter 812, parole revocation under chapter 908, or juvenile action in which the indigent person is entitled to legal assistance at public expense. However, in juvenile cases, the court may directly appoint an existing nonprofit corporation established for and engaged in the provision of legal services for juveniles. An appointment shall not be made unless the person is determined to be indigent under section 815.9.

Iowa Code § 815.10(1)(a) (2016); *Jefferson v. Iowa Dist. Court for Scott Cty.*, 926 N.W.2d 519, 523 (Iowa 2019).

In *State v. Alspach*, this court read rule 2.28(1) (then rule 26(1)) and Iowa Code section 815.10(1) together and concluded that they provided a right to court-appointed counsel when a defendant is challenging restitution “imposed as part of the original sentencing order, or supplemental orders, under Iowa Code section 910.3,” but not when a defendant is later bringing an action under section 910.7. 554 N.W.2d 882, 883–84 (Iowa 1996). The *Alspach* court further noted that defendant would have had a statutory right to counsel had the restitution been finalized at sentencing and that he “should not be denied counsel simply because the amount of pecuniary damages was unavailable on the day of sentencing.” *Id.* at 884. Nevertheless, the court limited its holding “to challenges to restitution imposed as part of the original sentencing order, or supplemental orders.” *Id.* In doing

so, the court maintained the defendant would “ordinarily have no right to appointed counsel” if he initiated a later action to modify the restitution order because a later action would “not [be] part of the criminal proceedings.” *Id.*

Although Boyer argues that the civil judgment is a restitution order, it is not. The district court entered a civil judgment in accordance with Iowa Code section 356.7(3). Iowa Code § 356.7 (3) (the sheriff or municipality may choose to enforce the claim in the manner provided in chapter 626 (Execution)). The sheriff sought a civil order under this section as the sheriff may choose to do. Iowa Code § 356.7 (3). Simply because the civil judgment was filed under the criminal case number does not render the judgment a criminal restitution order. As a civil judgment, this also does not constitute a critical stage in the criminal proceeding which necessitates counsel. In this instance, there is neither a right to counsel nor a right to the effective assistance of counsel. *See generally Alspach*, 554 N.W.2d at 884 (a defendant does not have the right to appointed counsel if he initiated a later action to modify the restitution order because a later action would “not be part of the criminal proceedings.”) The district court’s order must be affirmed.

II. The District Court's Decision to Enter a Civil Judgment Under Iowa Code Section 356.7 Does Not Deny a Defendant Due Process.

Error Preservation

Boyer restates his earlier claims that he had no opportunity to object to the district court's order and that the imposition of the civil judgment constitutes an illegal sentence. Def. Brief at 11-12, 19-21. As set forth above, and incorporated herein, Boyer failed to preserve the claim by requesting a hearing as the district court instructed him to do. Likewise, the district court's order is not an illegal sentence but a collateral civil judgment. *See State v. Quijas*, No. 17-1043, 2018 WL 3654845, at *2 (Iowa Ct. App. Aug. 1, 2018).

Standard of Review

Constitutional claims are reviewed de novo. *Clay*, 824 N.W.2d 488, 494 (Iowa 2012). Once again, the claim is not preserved.

Merits

Boyer cannot establish he was denied due process when the district court entered a civil judgment for the room and board reimbursement fees to the Mills County Sheriff. Boyer had an opportunity to challenge the order, he did not do so. He cannot claim a denial of due process when he failed to act.

“A person is entitled to procedural due process when state action threatens to deprive the person of a protected liberty or property interest.” *Bowers v. Polk County Bd. Of Supervisors*, 638 N.W.2d 682, 690 (Iowa 2002); accord *Hernandez-Lopez*, 639 N.W.2d 226, 240 (Iowa 2002). Accordingly, the first step in any procedural due process inquiry is the determination of “whether a protected liberty or property interest is involved.” *Bowers*, 638 N.W.2d at 691. Such liberty interests have their source in the Federal Constitution and “include such things as freedom from bodily restraint, the right to contract, the right to marry and raise children, and the right to worship according to the dictates of a person's conscience.” *Id.* Protected property interests “‘are created and their dimensions are defined’ not by the Constitution but by an independent source such as state law.” *Id.* (citation omitted).

Upon determining that a protected interest is involved, this court undertakes an analysis that balances three factors to determine what process is due:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative

burdens that the additional or substitute procedural requirement[s] would entail.

Id. (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18, 33 (1976)); accord *Hernandez-Lopez*, 639 N.W.2d at 240. At the very least, procedural due process requires “notice and opportunity to be heard in a proceeding that is ‘adequate to safeguard the right for which the constitutional protection is invoked.’” *Bowers*, 638 N.W.2d at 691 (citation omitted); accord *Hernandez-Lopez*, 639 N.W.2d at 241. However, “[n]o particular procedure violates [due process] merely because another method may seem fairer or wiser.” *Bowers*, 638 N.W.2d at 691 (citation omitted).

In this case, the Mills County Sheriff filed a claim for room and board reimbursement on October 5, 2018. Room and Board Reimbursement (10/5/18); App. 9. The Sheriff provided Boyer notice of the claim on September 28, 2018. Room and Board Reimbursement (10/5/18); App. 9. Boyer acknowledged receipt of the claim by signing it. Room and Board Reimbursement (10/5/18); App. 9.

After the claim was filed, the district court entered a temporary order on the reimbursement claim. Order (10/5/18); App. 10. The order provided:

IT IS THEREFORE ORDERED, that the Reimbursement Claim in the total amount of \$4680.00 is approved, in favor of the Mills County Sheriff, and against BOYER, TRAVIS CARL.

IT IS FURTHER ORDERED that if BOYER, TRAVIS CARL disputes any part of the Reimbursement Claim he/she must request a hearing within twenty (20) days from the date this order was filed with the Clerk of Court by filing a written request for said hearing through the Clerk of Court at the Mills County Courthouse. If no hearing is requested, the Claim will be enforceable with the force and effect of a civil judgment against BOYER, TRAVIS CARL.

Order (10/5/18); App. 10 (emphasis added). The order approved the claim subject to Boyer's challenge within a twenty-day period. Order (10/5/18); App. 10. Boyer did not to challenge the order within the proscribed time period but opted instead to file a pro se notice of appeal. Pro Se Not. of Appeal (11/2/18); App. 12.

When the court approved the order, it amounted to a temporary order until such time as Boyer requested a hearing or the twenty-day period elapsed. Order (10/5/18); App. 10. While it may have been preferable to hold a hearing on the reimbursement claim so as to provide Boyer with a means of challenging the order before it became final, the court's failure to do so does not amount to a denial of due process. Boyer could have acted in accordance with the order and challenged the amount before it became final. Room and Board Reimbursement (10/5/18); App. 9. Despite being provided with the

information on how to challenge the temporary order, Boyer elected not to challenge the order in the manner prescribed. He filed a notice of appeal instead. This does not amount to a denial of due process.

Boyer further argues that section 356.7 does not offer a “defendant an opportunity to be heard because the court must approve the amount once received and once approved, it becomes a judgment.” Def. Brief at 21. Though 356.7 does not provide a specific opportunity for a hearing, the district court in this case allowed Boyer an opportunity to challenge the amount by requesting a hearing.

Order (10/5/18); App. 10. The court complied with Iowa Rule of Civil Procedure 1.904(2) and (3) by allowing Boyer the opportunity to file a motion to challenge the district court’s ruling. Iowa Rs. Civ. P.

1.904(2) and (3). Although Rule 1.904(3) provides that a motion will be “considered timely if filed within 15 days,” the court in this case extended it to 20 days giving Boyer more process than he was due.

Order (10/5/18) (emphasis added); App. 10. There was no denial of due process.

Boyer also claims that the statute is unconstitutional as applied in this case because the court’s order gave him 20 days to request a

hearing. Def. Brief at 25. He contends that this is similar to the “post-deprivation remedy that was rejected by this Court in *Jenkins*.”

Def. Brief at 25. This case is nothing like *Jenkins*.

In *State v. Jenkins*, 788 N.W.2d 640, 642 (Iowa 2010), the defendant challenged the district court’s discretion when ordering restitution payments to the Crime Victim Compensation Program. Prior precedent held that “the court had no discretion to review a restitution order to the CVCP” and the court was “required to order restitution to the CVCP for all payments remitted to the victim” regardless of whether a “causal connection” existed between the defendant’s offense and the victim’s injuries. *Id.* at 642. Thus, an offender could not challenge an award to CVCP in a sentencing proceeding. *Id.* at 645.

The court found that denying the defendant an opportunity to challenge the amount of restitution before the district court implicates his right to due process. *Id.* at 646. The court rejected dicta in one of the prior cases which noted that “any potential due process problem is avoided because the offender may file a postsentencing petition under Iowa Code section 910.7.” *Id.* The *Jenkins* court stated that while an offender may bring a restitution

challenge under section 910.7, that was not sufficient. *Id.* at 646-47. A request for a restitution hearing under section 910.7 is a postdeprivation remedy that is discretionary and not a matter of right. *Id.* at 647. Further, an offender is not entitled to counsel as a matter of right. *Id.*

The court's concerns in *Jenkins* do not exist here. This is not a restitution order but a civil judgment. The district court complied with the Rules of Civil Procedure in providing Boyer with notice of the order and an opportunity to challenge it. Order (10/5/18); App. 10. Boyer's failure to challenge the order in a timely fashion and in the manner prescribed does not equate with a denial of due process.

Finally, Boyer again contends that if the claim was unpreserved he was denied effective representation. As set forth above in issue I and incorporated herein, the court's order is a civil judgment. Boyer has no right to counsel in a civil matter. This claim must be rejected.

CONCLUSION

The district court's civil judgment must be affirmed.

REQUEST FOR NONORAL SUBMISSION

This case involves routine challenges to a district court's order and a claim of ineffective assistance of counsel. Oral argument is not necessary to resolve these issues. In the event argument is scheduled, the State requests to be heard.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **3,576** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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