

IN THE SUPREME COURT OF IOWA

No. 07-0697

Filed November 14, 2008

STATE OF IOWA,

Appellant,

vs.

RAYMOND SCOTT BAINES,

Appellee.

Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard, II, Judge.

The State appeals a district court ruling that the special sentencing provisions of Iowa Code section 903B.2 are unconstitutional.

JUDGMENT OF CONVICTION AFFIRMED. SENTENCE AFFIRMED IN PART AND VACATED IN PART; CASE REMANDED FOR RESENTENCING.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, Janet M. Lyness, County Attorney, and Deborah Farmer Minot and Anne M. Lahey, Assistant County Attorneys, for appellant.

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellee.

PER CURIAM.

The State appeals the district court's ruling, in which the court refused to impose the special sentence provisions of Iowa Code section 903B.2 (Supp. 2005) on Raymond Scott Baines, who had been convicted of one count of indecent exposure under chapter 709 and one count of indecent exposure in violation of an Iowa City ordinance. The district court found the sentencing statute was "illegal and unconstitutional." In this case, the court is asked to decide whether the special sentencing provisions of Iowa Code section 903B.2 violate the United States Constitution's prohibition against cruel and unusual punishment, the separation-of-powers doctrine, and the Equal Protection Clauses of the United States and Iowa Constitutions.

Other than the identity of the defendant, the facts in this appeal are identical to those presented in a companion case, *State v. Wade*, __ N.W.2d __ (Iowa 2008). The applicable legal principles are also the same. Based upon the reasoning contained in *Wade*, we find that Iowa Code section 903B.2 is neither illegal nor unconstitutional. Therefore, we remand this case with instructions that the sentence under section 903B.2 be imposed.

JUDGMENT OF CONVICTION AFFIRMED. SENTENCE AFFIRMED IN PART AND VACATED IN PART; CASE REMANDED FOR RESENTENCING.

All justices concur except Streit, J., who takes no part.

This opinion shall not be published.