

IN THE COURT OF APPEALS OF IOWA

No. 0-867 / 09-1234
Filed January 20, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CASS LAWRENCE HESSE,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James D. Coil (motion to dismiss), District Associate Judge, and Walter W. Rothschild (sentencing), Judge.

Cass Hesse appeals from his conviction for failure to register as a sex offender. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, and Thomas J. Ferguson, County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ. Tabor, J., takes no part.

VOGEL, J.

Cass Hesse appeals from his conviction for failure to register as a sex offender pursuant to Iowa Code sections 692A.3, 692A.4, and 692A.7 (2007). He alleges rule and statutory vagueness as well as insufficiency of the evidence to sustain his conviction. We affirm.

We review constitutional challenges related to statutes de novo. *State v. Sering*, 701 N.W.2d 655, 661 (Iowa 2005).

I. Vagueness Challenge in Motion to Dismiss.

Prior to Hesse's trial to the court on the minutes of testimony, he filed a motion to dismiss, asserting Iowa Rule of Criminal Procedure 2.26 was unconstitutionally vague.

More specifically, as argued at both the hearing on the motion to dismiss and in his brief in support of the motion, Hesse claimed he did not know when he was required to register as a sex offender, as he had appealed his conviction. He further maintained Rule 2.26 should have stayed the requirement to register. Rule 2.26(2) reads in part: "A sentence of confinement shall be stayed if an appeal is taken and the defendant is released pending disposition of appeal pursuant to Iowa Code chapter 814." He therefore claimed the vagueness of the rule was a violation of his due process rights under the Fifth Amendment of the United States Constitution. The district court, after taking the matter under advisement, ruled that it had no jurisdiction to determine

when or if a particular individual is required to register as a sex offender but rather, pursuant to the statutory scheme, that is the province of the Iowa Department of Public Safety. . . . The defendant's remedy is thus to seek administrative review of the Iowa Department of Public Safety's determination that he was

required to register as a sex offender during the pendency of the appeal for his convictions of three counts of Indecent Contact With a Child. The defendant's constitutional claim that the statute is void for vagueness must also be raised through the administrative review/appeal process before the court's jurisdiction to review the agency action under Chapter 17A of the Code of Iowa would attach.

On appeal, the State states that error has not been preserved on the constitutionality of either the applicable statute or rule. We agree. As the district court did not decide whether the statute or rule were void for vagueness, and Hesse did not seek to have the court expand its ruling, the issue has not been preserved for our review. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (explaining that an argument not raised below, nor ruled on by the district court, is not preserved for review by an appellate court).

II. Sufficiency of the Evidence.

Hesse next asserts the evidence was not sufficient to sustain his conviction. We review for correction of errors at law. *State v. Abbas*, 561 N.W.2d 72, 73 (Iowa 1997). Our review of the stipulated minutes of testimony reveal each element of the crime as charged are supported by facts to establish Hesse's guilt and sustain his conviction. We affirm pursuant to Iowa Court Rule 21.29(1)(a), (b), and (e).

AFFIRMED.