

IN THE COURT OF APPEALS OF IOWA

No. 14-1538
Filed October 14, 2015

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROGER MCDANIEL,
Defendant-Appellant.

Appeal from the Iowa District Court for Appanoose County, Myron L. Gookin, Judge.

Roger McDaniel appeals the denial of his motion to correct an illegal sentence following his plea of guilty to one count of lascivious acts with a child and sentencing. **AFFIRMED.**

Monte M. McCoy of McCoy Legal Services, Centerville, for appellant.

Thomas J. Miller, Attorney General, Heather Ann Mapes, Assistant Attorney General, Richard F. Scott, County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ.

POTTERFIELD, Judge.

Roger McDaniel pleaded guilty to one count of lascivious acts with a child in violation of Iowa Code section 709.8(3) (2011)¹ on April 23, 2013. He was sentenced to a five-year term of incarceration and fined under Iowa Code section 902.9(5), assessed a surcharge under section 911.1, and specially sentenced to ten years' supervision upon completion of his term of incarceration pursuant to section 903B.2. The fine and surcharge were suspended. Mittimus issued immediately. McDaniel appealed his sentence, and this court affirmed. See *State v. McDaniel*, No. 13-1458, 2014 WL 1999121, at *2 (Iowa Ct. App. May 14, 2014). On August 4, 2014, McDaniel filed a handwritten pro se motion for correction of an illegal sentence in the district court. The district court denied the motion. McDaniel appeals.²

McDaniel's only claim on appeal is that the special sentence mandated by Iowa Code section 903B.2 violates the protections against double jeopardy provided by the United States Constitution and that his sentence is therefore illegal. See U.S. Const. amend. V ("No person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb."); see also *State v. Lathrop*, 781 N.W.2d 288, 293 (Iowa 2010) ("Illegal sentences may be challenged at any time . . ."). We review de novo. See *State v. Lindell*, 828 N.W.2d 1, 4 (Iowa 2013).

¹ "It is unlawful for any person sixteen years of age or older to . . . solicit a child to engage in a sex act . . . with or without the child's consent . . . for the purpose of arousing or satisfying the sexual desires of either of them[.]" Iowa Code § 709.8(3). Following the legislature's 2013 amendments, this provision is now found in Iowa Code section 709.8(1)(d) (2015).

² The State asserts McDaniel should have filed for discretionary review rather than appealed. See Iowa R. App. P. 6.103(1); Iowa Code § 814.6. Though the State argues discretionary review is "more appropriate," we consider the merits of this appeal.

The Double Jeopardy Clause protects defendants from “multiple punishments for the same offense.” *Id.* McDaniel argues the term of incarceration imposed under section 902.9 and the special sentence under 903B.2 are two different punishments and he has therefore been subjected to multiple punishments for the same offense.

“In considering a double jeopardy claim within the multiple punishments context, we are guided by the general principle that the question of what punishments are constitutionally permissible is no different from the question of what punishments the legislature intended to be imposed.” *Id.* at 4–5; see also *Missouri v. Hunter*, 459 U.S. 359, 366–68 (1983); *State v. McKettrick*, 480 N.W.2d 52, 57 (Iowa 1992). The legislature has the power to define criminal offenses and punishments with “[f]ew, if any, limitations . . . imposed by the Double Jeopardy Clause.” *Lindell*, 828 N.W.2d at 4 (quoting *Sanabria v. United States*, 437 U.S. 54, 69 (1978)). It is clear from the mandatory terms of section 903B.2 that the legislature intended the special sentence to be added to an indeterminate term of incarceration imposed under section 902.9. See Iowa Code § 903B.2 (imposing special sentence “in addition to any other punishment provided by law”). Section 903B.2 does not violate the Double Jeopardy Clause of the federal constitution.

AFFIRMED.