

IN THE COURT OF APPEALS OF IOWA

No. 1-756 / 11-0043
Filed November 23, 2011

STATE OF IOWA,
Plaintiff-Appellant,

vs.

**IOWA DISTRICT COURT
FOR HAMILTON COUNTY,**
Defendant-Appellee.

Appeal from the Iowa District Court for Hamilton County, William J. Pattinson, Judge.

The State appeals the district court's determination that a defendant is only required to serve one additional term of parole or work release despite being sentenced to terms of confinement on three counts of lascivious acts with a minor. **AFFIRMED.**

Thomas J. Miller, Attorney General, William A. Hill, Assistant Attorney General, for appellant.

Mark C. Smith, State Appellate Defender, and Vidhya K. Reddy, Assistant Appellate Defender, for Ronny Fortune, appellee.

Heard by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

VAITHESWARAN, P.J.

Ronny Fortune entered *Alford*¹ pleas to three counts of lascivious acts with a child, in violation of Iowa Code section 709.8 (2001). The district court sentenced him to three prison terms not exceeding five years each, to be served consecutively. Additionally, pursuant to Iowa Code section 709.8, the court ordered Fortune “to serve an additional term of parole or work release not to exceed two years upon the expiration of the preceding sentence.”

Fortune and the State moved to clarify this last portion of the sentencing order. They specifically asked the court to explain whether the additional two-year term was “a single two-year sentence or three consecutive two-year additional terms.” The district court concluded that Iowa Code section 709.8 “could only have had a duration of two years, *total*.” The court continued, “The pertinent statutes, as they then existed, did not authorize the imposition of three separate and consecutive ‘additional’ sentences, and I did not intend any such thing.” The State appealed.

On appeal, the State frames the issue as follows: “[W]hether § 709.8 should be construed to allow an offender convicted of multiple lascivious acts with a child convictions to serve more than one additional two year term.” Our review of this issue is for errors of law. *State v. Anderson*, 782 N.W.2d 155, 157 (Iowa 2010).

¹ An *Alford* plea is a variation of a guilty plea where the defendant does not admit participation in the acts constituting the crime but consents to the imposition of a sentence. *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167, 27 L. Ed. 2d 162, 171 (1970); *State v. Burgess*, 639 N.W.2d 564, 567 n.1 (Iowa 2001).

In pertinent part, the statute stated,²

A person who violates a provision of this section and who is sentenced to a term of confinement shall also be sentenced to an additional term of parole or work release not to exceed two years. . . . The sentence of an additional term of parole or work release supervision shall commence immediately upon the expiration of the preceding sentence and shall be under the terms and conditions as set out in chapter 906. . . . The sentence of an additional term of parole or work release shall be consecutive to the original term of confinement.

Iowa Code § 709.8.

We agree with the district court that the statute plainly and unambiguously called for only one additional two-year term to be served at the expiration of the original term of confinement. See *Anderson*, 782 N.W.2d at 159 (“We must determine legislative intent based on the language chosen by the legislature.”). As the court stated, a separate statute, Iowa Code section 901.8, requires consecutive prison terms to be construed “as one continuous term of imprisonment.” Based on that statute, the court determined “term of confinement” in Iowa Code section 709.8 meant “the aggregate of all consecutive terms imposed on a given defendant.” In Fortune’s case, this was fifteen years. Because his term of confinement was the total of his three prison sentences, the court concluded, “[A] sentencing court had no ability in 2003 to give a defendant additional and consecutive parole periods for each of his or her Section 709.8 violations.” We discern no error in this conclusion and reasoning. Cf. *State v. Angle*, 353 N.W.2d 421, 425 (Iowa 1984) (concluding five-year limitation on the

² This provision has been repealed and replaced by Iowa Code sections 903B.1 and 903B.2 (2011) but it was in effect when Fortune was sentenced. 2005 Iowa Acts ch. 158, §§ 35, 39.

length of probation for a felony conviction was not extended when there were multiple convictions involved in a single sentencing order).

We affirm the district court's reaffirmation of Fortune's single, two-year additional sentence under section 709.8.

AFFIRMED.