

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1150 / 11-1095  
Filed February 27, 2013

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**KEITH BRUNS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

A defendant contends that the sentence imposed on him constitutes cruel and unusual punishment and that the procedure for commuting sentences, which was amended after he was sentenced, violates the Ex Post Facto Clause of the United States Constitution. **AFFIRMED.**

Keith W. Bruns, Coralville, appellant pro se.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and James Katcher, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

**VAITHESWARAN, J.**

Keith Bruns, found guilty of first-degree kidnapping in 1979, was sentenced to life in prison.<sup>1</sup> He was twenty years old when he committed the crime.

Twenty-two years later, Bruns filed a motion to correct an illegal sentence.<sup>2</sup> He alleged that, given his age at the time he committed the crime, his life sentence amounted to cruel and unusual punishment under the United States and Iowa Constitutions. At a hearing on his motion, he added an assertion that the procedure for commuting sentences, which was amended after he was sentenced, violated the Ex Post Facto Clause of the United States Constitution. The district court denied the motion, and this appeal followed.

On appeal, Bruns reiterates that his “life sentence without the possibility of parole for a non-murder offense by a young adult” violates the Eighth Amendment to the United States Constitution.<sup>3</sup> He relies on a series of United States Supreme Court opinions holding certain sentences unconstitutional as applied to juveniles. See *Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012) (“We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.”); *Graham v. Florida*, 130 S. Ct. 2011, 2034 (2010) (“The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not

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<sup>1</sup> He was also sentenced to a prison term not to exceed ten years on a conviction for third-degree sexual assault. That sentence was discharged and is not at issue on appeal.

<sup>2</sup> The State concedes a defendant may challenge the legality of a sentence at any time. See *State v. Oliver*, 812 N.W.2d 636, 639 (Iowa 2012).

<sup>3</sup> He does not make a separate argument under the Iowa Constitution.

commit homicide.”); *Roper v. Simmons*, 543 U.S. 551, 575 (2005) (holding that “the death penalty cannot be imposed upon juvenile offenders”). Bruns was not a juvenile when he committed the crime. For that reason, those opinions are inapposite.

Bruns also contends his life sentence without the possibility of parole constitutes cruel and unusual punishment because “[f]irst degree kidnapping is punished the same as first degree murder.” The Iowa Supreme Court considered and rejected this argument in 1984. *Lamphere v. State*, 348 N.W.2d 212, 220–21 (Iowa 1984) (“We find no merit in the contention that Iowa’s penalty for this crime is unconstitutionally disproportionate.”) This holding is controlling.

Finally, Bruns reprises his argument that his sentence violates the Ex Post Facto Clause of the United States Constitution. See U.S. Const. art. I, § 10, cl. 1 (“No State shall . . . pass any . . . ex post facto Law.”). He grounds this argument on an amendment to the statutory provision on commutation of sentences, Iowa Code section 902.2 (2011). At the time Bruns was sentenced, that provision permitted consideration of commutation within five years of confinement. Iowa Code § 902.2 (1979). The statute was later amended to require a waiting period of ten years before persons sentenced to life imprisonment could seek gubernatorial commutation of their sentences. Compare *id.*, with Iowa Code § 902.2 (2011); see also 1995 Iowa Acts ch. 128, § 1. We are not persuaded that this change implicates the Ex Post Facto Clause. As the Eighth Circuit stated in examining the identical issue under the same statutory provision, “Whereas changes to parole procedures may, in some circumstances raise ex post facto concerns, changes to Iowa’s procedures for commutation applications

do not.” *Snodgrass v. Robinson*, 512 F.3d 999, 1002 (8th Cir. 2008). The court reasoned that commutation procedures, unlike parole procedures, involve “highly personal, policy oriented, and legislatively unchecked authority of the Iowa governor.” *Id.* The court continued,

The unpredictability of a wholly discretionary grant of commutation in Iowa precludes Snodgrass from demonstrating that the changes in Iowa’s law raise a “significant risk” that she will be denied a commutation she otherwise would have received. As such, she cannot demonstrate there is a significant risk her punishment will be longer than it would have been under former Iowa Code Section 902.2. Accordingly, she cannot make out an ex post facto claim.

*Id.* at 1002–03. We are persuaded by this holding and reasoning.

We affirm the district court’s denial of Bruns’s motion for correction of an illegal sentence.

**AFFIRMED.**