

IN THE COURT OF APPEALS OF IOWA

No. 2-998 / 12-0024
Filed January 9, 2013

STATE OF IOWA,
Petitioner,

vs.

IOWA DISTRICT COURT FOR STORY COUNTY,
Respondent.

Certiorari to the Iowa District Court for Story County, Timothy J. Finn,
Judge.

The State filed a petition for writ of certiorari, challenging the legality of a district court order granting a sex offender's application to modify his registration requirements pursuant to Iowa Code section 692A.128 (2011). **WRIT SUSTAINED.**

Thomas J. Miller, Attorney General of Iowa, and John R. Lundquist, Assistant Attorney General, Des Moines, for petitioner.

Andrew J. Boettger of Hastings, Gartin, & Boettger, L.L.P., Ames, for respondent.

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

VAITHESWARAN, J.

David Buchwald, convicted of lascivious acts with a child, upon his release from prison was required to register as a sex offender for ten years. Approximately seven years after his release, Buchwald applied to modify the registration requirement pursuant to Iowa Code section 692A.128 (2011). That code provision authorizes a reduction of the registration period under specified circumstances.

The district court granted the application and reduced the duration of Buchwald's registration period to five years. Because that period had elapsed before Buchwald filed his modification application, the court ordered Buchwald removed from the registry.

The State filed a petition for writ of certiorari, challenging the legality of the district court order. The Iowa Supreme Court granted the petition and transferred the case to this court. Our review is for errors at law. *State v. Iowa Dist. Ct.*, 812 N.W.2d 1, 2 (Iowa 2012).

I. Analysis

Iowa Code section 692A.128 states in pertinent part:

1. A sex offender who is on probation, parole, work release, special sentence, or any other type of conditional release may file an application in district court seeking to modify the registration requirements under this chapter.

2. An application shall not be granted unless all of the following apply:

a. The date of the commencement of the requirement to register occurred at least two years prior to the filing of the application for a tier I offender and five years prior to the filing of the application for a tier II or III offender.

b. The sex offender has successfully completed all sex offender treatment programs that have been required.

c. A risk assessment has been completed and the sex offender was classified as a low risk to reoffend. The risk assessment used to assess an offender as a low risk to reoffend shall be a validated risk assessment approved by the department of corrections.

d. The sex offender is not incarcerated when the application is filed.

e. The director of the judicial district department of correctional services supervising the sex offender, or the director's designee, stipulates to the modification, and a certified copy of the stipulation is attached to the application.

. . . .

5. The court may, but is not required to, conduct a hearing on the application to hear any evidence deemed appropriate by the court. The court may modify the registration requirements under this chapter.

6. A sex offender may be granted a modification if the offender is required to be on the sex offender registry as a result of an adjudication for a sex offense, the offender is not under the supervision of the juvenile court or a judicial district judicial department of correctional services, and the department of corrections agrees to perform a risk assessment on the sex offender. However, all other provisions of this section not in conflict with this subsection shall apply to the application prior to an application being granted except that the sex offender is not required to obtain a stipulation from the director of a judicial district department of correctional services, or the director's designee.

The district court applied this provision as follows: First, the court concluded Buchwald "successfully completed all of the conditional oversight requirements set forth in subsection (1) of section 692A.128." Second, the court cited the State's concession that Buchwald satisfied the applicable prerequisites to modification set forth in subsection (2).¹ Third, the court stated it had discretion to modify the registration requirement under subsection (5). Finally, the court found subsection (6) inapplicable to this case, reasoning the subsection "quite clearly applies only to juvenile offenders."

¹ Over the State's objection, the district court ordered Buchwald to undergo a risk assessment. That assessment placed Buchwald "in the low range to reoffend."

In this proceeding, the State only takes issue with the district court's interpretation and application of subsection (1). Buchwald's responsive arguments likewise only address subsection (1).² Accordingly, we will confine our analysis to that subsection.

The State focuses on the first clause of subsection (1): "A sex offender *who is on* probation, parole, work release, special sentence, or any other type of conditional release." Iowa Code § 692A.128(1) (emphasis added). The State contends Buchwald "was statutorily ineligible for a modification of his sex offender registration requirement because he was not on 'probation, parole, work release, special sentence, or any other type of conditional release.'" We agree.

Subsection (1) is written in the present tense. By its terms, modification under this subsection is only available to sex offenders who are on some type of conditional release at the time they apply for a modification. Buchwald was not on any type of conditional release when he applied for a modification. For that reason, subsection (1) does not apply to him. See *Kolzow v. State*, 813 N.W.2d 731, 736 (Iowa 2012) ("When a statute is plain and its meaning clear, courts are not permitted to search for meaning beyond its express terms." (citations omitted)); *State v. Anderson*, 782 N.W.2d 155, 158 (Iowa 2010) ("In determining plain meaning, 'statutory words are presumed to be used in their ordinary and

² As noted, the district court also addressed the applicability of subsection (6) and accepted the State's argument that the provision only applied to juveniles. See Iowa Code § 692A.128(6) (referring to "adjudication," a term that has been applied to juvenile findings of guilt, but also stating the provision applies to offenders who are "not under the supervision of the juvenile court or a judicial district judicial department of correctional services"). Buchwald does not take issue with this aspect of the court's order. "[W]e will not speculate on the arguments [that] might have [been] made and then search for legal authority and comb the record for facts to support such arguments." See *Hylar v. Garner*, 548 N.W.2d 864, 876 (Iowa 1996).

usual sense and with the meaning commonly attributable to them.” (citation omitted)).

Anticipating this result, Buchwald also responds to the State’s application for writ of certiorari with constitutional challenges to subsection (1). He contends “denying ‘off-paper’ registrants the opportunity to petition for removal is unconstitutional as applied” under the due process and equal protection clauses of the federal and state Constitutions.

During oral argument, Buchwald’s attorney conceded Iowa Supreme Court precedent stands in the way of his due process challenges. See *State v. Seering*, 701 N.W.2d 655, 665–666 (Iowa 2005) (rejecting substantive and procedural due process challenges to the residency restriction provision in chapter 692A). We believe the same holds true for his equal protection challenges. See *Wright v. Iowa Dep’t of Corr.*, 747 N.W.2d 213, 216–217 (Iowa 2008) (rejecting equal protection challenge to residency restriction requirement). While these opinions did not specifically address the constitutionality of section 692A.128, we discern no material distinction in the argument or analysis. In light of this precedent, we find the constitutional arguments unpersuasive.

II. Conclusion

We conclude Buchwald was not entitled to a modification of his sex offender registration requirement pursuant to Iowa Code section 692A.128(1). Accordingly, we sustain the writ of certiorari.

WRIT SUSTAINED.