

IN THE COURT OF APPEALS OF IOWA

No. 3-095 / 11-1735
Filed March 13, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

NATHAN LEIGH STIENSTRA,
Defendant-Appellant.

Appeal from the Iowa District Court for Sioux County, Jeffrey A. Neary,
Judge.

A defendant appeals his sentence for forgery of a lottery ticket and theft.

AFFIRMED.

Mark C. Smith, State Appellate Defender, for appellant.

Nathan Leigh Steinstra, Orange City, appellant pro se.

Thomas J. Miller, Attorney General, Jeanie Kunkle Vaudt, Assistant
Attorney General, and Coleman J. McAllister, County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

VOGEL, P.J.

A defendant, Nathan Leigh Stienstra, appeals his sentence following a trial on the minutes of testimony and trial information finding him guilty of forgery of a lottery ticket in violation of Iowa Code section 99G.36(1) (2011), a class D felony, and theft in the fourth degree in violation of Iowa Code section 714.1 and 714.2(4), a serious misdemeanor. He argues the trial court imposed an illegal sentence for not merging the two counts pursuant to Iowa Code section 701.9. Stienstra also filed a pro se brief arguing the “legislation serves a miscarriage of justice,” and the sentence violated his due process and equal protection rights. Because Stienstra committed two separate acts, the two separate convictions and sentences were appropriate. We therefore affirm.

I. Background Facts and Proceedings

On January 11, 2011, Stienstra was charged by trial information of five counts of forgery of a lottery ticket. Pursuant to an agreement, Stienstra waived his right to a jury trial and proceeded to trial on the minutes of testimony and trial information. Stienstra presented no additional evidence. As part of the agreement, he would be tried on one count of forgery of a lottery ticket, and one count of theft in the fourth degree.

The record shows on November 19, 2010, Stienstra worked at a Casey’s General Store as a clerk. He had access to a locked safe and removed fifteen lottery scratch tickets with a combined value of three hundred dollars. A coworker, Dillon Feltman, confirmed Stienstra used the key to access the safe while Feltman attempted to block video recording of Stienstra’s access to the safe. Feltman also reported Steinstra slid the tickets out of the safe onto the

floor, at which time Feltman picked up the tickets, put them in his pocket, and then returned them to Stienstra. Stienstra took them into another room to scratch the tickets. Stienstra did not pay for the tickets and Casey's reported the tickets as stolen. The stolen tickets had specific lot numbers which enabled them to be tracked. On November 23, 2010, two of the tickets that had been taken from Casey's were redeemed by another man, David Medema, at another convenience store. Medema told police Stienstra owed him money, so Stienstra gave Medema the winning tickets (two tickets valued at \$40 each), Medema cashed them, and then kept \$40 and gave the other \$40 to Stienstra. Medema did not know the tickets were stolen.

After being charged, Stienstra filed a motion to dismiss based on "equal protection" and "due process." In essence, he was alleging Iowa Code section 99G.36(1) is unconstitutional because the penal consequences for stealing a lottery ticket are more severe than for stealing an equivalent amount of cash. The district court denied the motion finding, "Those that cheat or steal from the public lottery system attack its integrity so the legislature reasonably chose to make such violators subject to more serious penal consequences than if the person committed an ordinary theft."

Stienstra was convicted at the bench trial on both counts. He was sentenced to five years in prison on the forgery of lottery ticket count, which was suspended, and he was placed on probation for two-years. For the theft count, Stienstra was sentenced to thirty days in jail with credit for twelve days. The sentences were to run concurrently. He now appeals.

II. Standards of Review

Where a defendant alleges he has illegally been sentenced under the merger statute, our review is for the correction of errors at law. See *State v. Anderson*, 565 N.W.2d 340, 342 (Iowa 1997); see also Iowa R. App. P. 6.904. To the extent Stienstra's pro se arguments are claims of a constitutional nature, we review them de novo. *State v. Seering*, 701 N.W.2d 655, 660 (Iowa 2005).

III. Merger

Stienstra argues the theft charge was included in the forgery of a lottery ticket charge and therefore the district court erred in not merging the convictions. Iowa Code section 701.9 "codified the double jeopardy protection against cumulative punishment." *State v. Gallup*, 500 N.W.2d 437, 445 (Iowa 1993). Iowa courts use the "impossibility test" that provides one offense is a lesser-included offense of the greater when the greater offense cannot be committed without also committing the lesser. *State v. Anderson*, 565 N.W.2d 340, 343 (Iowa 1997). When the State files two charges as separate offenses and proves them both, whether one offense is a lesser included offense of the other is irrelevant. *State v. Truesdell*, 511 N.W.2d 429, 432 (Iowa Ct. App. 1993). Iowa Code section 99G.36(1) provides

A person who, with intent to defraud, falsely makes, alters, forges, utters, passes, redeems, or counterfeits a lottery ticket or share or attempts to falsely make, alter, forge, utter, pass, redeem, or counterfeit a lottery ticket or share, or commits theft or attempts to commit theft of a lottery ticket or share, is guilty of a class "D" felony.

A person commits a theft when the person, "Takes possession or control of the property of another . . . with the intent to deprive the other thereof." Iowa Code

§ 714.1. The district court's findings of fact and conclusions of law were clear in that Stienstra committed two wrong acts rather than one continuing act. First, he wrongfully took the lottery tickets with the intent to deprive Casey's of them—the theft conviction. Then, four days later, he passed those tickets to Medema,¹ to redeem the stolen tickets. The State proved he committed two separate acts and as such the two convictions should not merge. See *State v. Walker*, 610 N.W.2d 524, 527 (Iowa 2000).

IV. Pro Se claims

Stienstra makes multiple pro se claims. First he claims he “feels that the code for lottery ticket theft is far overwritten in the legislation, and that there has been a complete lack of oversight by our lawmakers in regards to this code.” We agree with the State's response that policy debates are better left to legislative resolution. See *e.g. State v. Becker*, 818 N.W.2d 135, 159-60 (Iowa 2012).

He next vaguely argues his sentence violated his due process and equal protection rights. He generally is reasserting his argument from his motion to dismiss that his equal protection is violated because the penal consequences for stealing a lottery ticket are more severe than for stealing an equivalent amount of cash. The district court properly rejected this argument and we see no reason to find otherwise.

¹ The district court found Stienstra's “actions in giving the winning tickets to *Feltman* to redeem after he took them from the safe, and scratched them were directly passing or redeeming the lottery tickets or acting in concert with another to accomplish the same.” We believe this is merely a scrivener's error, as the record is clear Medema redeemed the tickets.

V. Conclusion

Because Stienstra committed two separate acts, the two separate convictions were appropriate and the sentences were not illegal. Stienstra's prose arguments are without merit.

AFFIRMED.