

IN THE COURT OF APPEALS OF IOWA

No. 3-246 / 12-0510
Filed May 30, 2013

IVAN DAGOBERTO GARCIA,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

STATE OF IOWA,
Plaintiff-Appellee,

vs.

IVAN DAGOBERTO GARCIA,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Douglas S. Russell, Judge.

Appeal from the denial of an application to correct illegal sentence and dismissal of an application for postconviction relief. **AFFIRMED.**

Jerald Kinnamon and Jon Kinnamon of Kinnamon, Kinnamon, Russo, Meyer, Keegan & Farnsworth, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Benjamin Parrott, Assistant Attorney General, Janet M. Lyness, County Attorney, and Susan Nehring, Assistant County Attorney, for appellee State.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

EISENHAUER, C.J.

Ivan Garcia appeals from the district court's denial of his application to correct illegal sentence and dismissal of his application for postconviction relief. He contends his application to correct illegal sentence should be reinstated in light of the constitutional guarantee of due process and prohibition against ex post facto application of new law. He contends his postconviction relief action should be reinstated so he can establish the trial court affirmatively misinformed him concerning his sentence. We affirm.

I. Background Facts and Proceedings.

In 1999 Garcia was charged with third-degree sexual abuse. In August 2001, pursuant to a plea agreement, Garcia pleaded guilty to assault with intent to commit sexual abuse and was sentenced to serve thirty days in jail, ordered to participate in sex offender treatment, and placed on probation for two years. He also was advised he was required to register as a sex offender. The court stated the "obligation to register as a sex offender continues for a period of ten years from release on probation." The sentencing order also provided, "This obligation to register as a sex offender continues for a period of ten (10) years." Garcia did not appeal. Sometime later he learned the registration requirement was for life.

Garcia served his jail time, completed the sex offender treatment, registered as a sex offender, and successfully completed his probation. He was discharged from probation in August 2003. In October 2011 Garcia filed his application to correct illegal sentence, contending the ten-year registration period had expired and extending his registration period for life violated the explicit terms of the sentencing order. He also contended changing the registration

requirement after his sentencing violated constitutional due process and ex post facto provisions. Also in October 2011, Garcia filed an application for postconviction relief, alleging any extension in his registration term meant he was misinformed by the court of the consequences of his guilty plea, and the State was being permitted to modify the sentencing order and “impose adverse consequences beyond that provided in the resolution of the criminal case.”

The trial court considered both applications in a combined hearing in December 2011. In February 2012 the court granted the State’s motion to dismiss Garcia’s postconviction relief application and denied his application to correct an illegal sentence. Garcia filed applications to reconsider and for enlarged or amended findings, conclusions, and a substituted judgment. The trial court denied Garcia’s applications. Garcia appeals.

II. Scope and Standards of Review.

We review sentences for correction of errors at law. Iowa R. App. P. 6.907. An illegal sentence may be corrected at any time. Iowa R. Crim. P. 2.24(5). Postconviction relief proceedings are civil actions reviewable for correction of errors at law. *Goosman v. State*, 764 N.W.2d 539, 541 (Iowa 2009). To the extent Garcia raises constitutional questions, our review is de novo. *Lamasters v. State*, 821 N.W.2d 856, 862 (Iowa 2012).

III. Merits.

A. Correction of an Illegal Sentence.

1. *Illegal Sentence.* Garcia contends the court erred in denying his application to correct illegal sentence. His argument, however, revolves around claims the county attorney and the court refused to comply with the terms of the

plea agreement or refused to enforce the sentencing order entered in 2001. The State responds the registration requirement is not part of Garcia's sentence and it is not an illegal sentence. It also responds the registration statute is not punitive and does not violate the prohibition against ex post facto laws.

Garcia's arguments are not challenges to an illegal sentence. An illegal sentence is "one not permitted by law." *State v. Parker*, 747 N.W.2d 196, 212 (Iowa 2008). "[A] challenge to an illegal sentence includes claims that the court lacked the power to impose the sentence or that the sentence itself is somehow inherently legally flawed, including claims that the sentence is outside the statutory bounds or that the sentence itself is unconstitutional." *State v. Bruegger*, 773 N.W.2d 862, 871 (Iowa 2009). Garcia raises no such challenges. The district court correctly dismissed his application.

2. *Ex Post Facto*. Garcia also argues the changes in statutory registration requirements made since he was sentenced make the registration requirements punitive, and applying those requirements to him violates constitutional protections against ex post facto laws. The State responds the registration statute is not punitive and does not violate the prohibition against ex post facto laws, even if its requirements were changed after Garcia's sentencing in 2001.

"The ex post facto provisions of the federal and state constitutions forbid enactment of laws that impose punishment for an act that was not punishable when committed or that increases the quantum of punishment provided for the crime when it was committed." *State v. Pickens*, 558 N.W.2d 396, 397 (Iowa 1997). Our supreme court concluded "Iowa's sex offender registration statute, Iowa Code chapter 692A, is not punitive and therefore is not ex post facto." *Id.* at

400. At the time Garcia entered his guilty plea, the court's involvement in the registration process was limited to (1) collecting specified data from the person required to register, (2) informing convicted defendants who are not sentenced to confinement of their duty to register and their duty to notify the sheriff when their address changes, and (3) requiring the person to read and sign a form stating the duty to register has been explained. See Iowa Code § 692A.5(1) (2001). The determination whether a person is subject to chapter 692A and is required to register as a sex offender is the responsibility of the department of public safety, not the courts. See *id.* § 692A.8. The department of public safety, not the court, imposes the registration requirement. See *State v. Bullock*, 638 N.W.2d 728, 734-35 (Iowa 2002). Even if the requirements have changed since Garcia was required to register, chapter 692A is regulatory or remedial, not punitive, and therefore not ex post facto when applied retroactively. See *Pickens*, 558 N.W.2d at 400. The district court properly rejected this claim.

B. Postconviction Relief.

Iowa Code section 822.2 (2009) set forth the grounds upon which a convicted person may obtain relief:

- a. The conviction or sentence was in violation of the Constitution of the United States or the Constitution or laws of this state.
- b. The court was without jurisdiction to impose sentence.
- c. The sentence exceeds the maximum authorized by law.
- d. There exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.
- e. The person's sentence has expired, or probation, parole, or conditional release has been unlawfully revoked, or the person is otherwise unlawfully held in custody or other restraint.
- f. The person's reduction of sentence pursuant to sections 903A.1 through 903A.7 has been unlawfully forfeited and the

person has exhausted the appeal procedure of section 903A.3, subsection 2.

g. The conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error formerly available under any common law, statutory or other writ, motion, petition, proceeding, or remedy, except alleged error relating to restitution, court costs, or fees under section 904.702 or chapter 815 or 910.

The State contends none of the grounds apply because the registration requirement is not a part of the sentence, so Garcia is not challenging a sentence. The district court concluded Garcia was not challenging a “conviction or sentence” as contemplated by chapter 822; therefore, “the injury complained of . . . is not remediable under Iowa Code chapter 822.”

Garcia contends subsections (a) and (d) apply. He argues (a) applies because the registration requirement was part of the sentencing order and the lifetime registration violates the plea agreement and the sentence imposed. Alternatively, Garcia argues (d) applies because, if the court did not have the authority to set the registration term, it misinformed him of the consequences of his plea. He argues although the court was not obligated to inform him of all the collateral consequences of his plea, the court was not free to misinform him. See *Meier v. State*, 337 N.W.2d 204, 207 (Iowa 1983).

Garcia’s claim the lifetime registration requirement violates both the plea agreement and the sentencing order is not a claim the sentence is illegal, exceeds the maximum allowable by law, or the court was without authority to impose it. See Iowa Code § 822.2(a)-(c). His claim the court misinformed him of the consequences of his plea could be the type of claim described in (d). If it is, then the claim is time-barred because Garcia did not raise it within three years of his conviction. See *id.* § 822.3. The exception to the three-year limitation for “a

ground of fact or law that could not have been raised within the applicable time period” does not apply because Garcia was notified of the lifetime registration requirement at least by September of 2001, as is evidenced by his signature on the notification form acknowledging he was notified. The form notified Garcia, in part, “upon a conviction for an ‘aggravated offense,’ the registration period shall be for life.” The district court correctly determined Garcia’s claims are “not remediable under Iowa Code chapter 822” and dismissed his application.

The district court correctly denied Garcia’s application to correct an illegal sentence and granted the State’s motion to dismiss Garcia’s application for postconviction relief.

AFFIRMED.