

**IN THE COURT OF APPEALS OF IOWA**

No. 3-895 / 12-1920  
Filed January 9, 2014

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

**vs.**

**BRIAN SHANE WILLIAMS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Jasper County, Thomas W. Mott,  
Judge.

Brian Shane Williams appeals his convictions for failing to comply with the  
requirements of the sex offender registry. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan Japuntich,  
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas Miller, Assistant Attorney  
General, Michael K. Jacobsen, County Attorney, and Susan Wendel, Assistant  
County Attorney, for appellee.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

**BOWER, J.**

Brian Shane Williams appeals his convictions for failing to comply with the requirements of the sex offender registry. Williams contends the district court erred in refusing to suspend, waive, and exempt him from the registration requirements because: the requirements are a violation of the Equal Protection Clause of the Iowa Constitution and United States Constitution; the registration requirements constitute cruel and unusual punishment; and the registration requirements violate his due process rights. We find the registration requirements do not violate the equal protection clause as the statute does not create two classifications of individuals who are treated differently. We also find the registration requirements do not constitute punishment and therefore are not cruel and unusual, and punishment for violating the registration requirements is not cruel and unusual. Lastly, Williams failed to preserve his due process claim for our review and his ineffective assistance of counsel claims are preserved for postconviction relief.

**I. Background Facts and Proceedings**

On March 3, 2000, Brian Shane Williams pled guilty, in juvenile court, to a charge of sexual abuse in the second degree. Williams was thirteen years old at the time. He was adjudicated delinquent and was required to register as a sex offender. On May 15, 2009, Williams received a ten-day jail sentence for failure to register as a sex offender. He also pled guilty to a charge of failure to register as a sex offender on October 10, 2010, and was given a five year suspended

prison sentence. As a part of the sentence, Williams was placed on probation for two years.

On February 17, 2012, Williams was charged with living within 2000 feet of an elementary school, and on March 6, 2012, he was charged with living within 2000 feet of a daycare center. The cases were consolidated, and Williams filed a motion to suspend, waive, and exempt the registration requirement. The district court denied the motion on July 17, 2012. In its order, the district court ruled on the equal protection claim, the cruel-and-unusual-punishment claim, and other issues not raised in this appeal.<sup>1</sup> Following a non-jury trial, Williams was found guilty on September 12, 2012, of two counts of failing to comply with sex offender registry requirements. Because of his prior convictions, each charge was enhanced from an aggravated misdemeanor to a class “D” felony.

## **II. Standard of Review**

We review constitutional challenges de novo. *Wright v. Iowa Dep’t of Corrections*, 747 N.W.2d 213, 216 (Iowa 2008). We will presume a statute is constitutional. *Id.* Williams bears the burden to rebut that presumption. *Id.*

## **III. Discussion**

### **Equal Protection**

Williams was adjudicated delinquent in 2000. The statute at the time required him to register as a sex offender “unless the juvenile court finds that the person should not be required to register.” Iowa Code § 692A.2(4) (1999). In 2009, the Iowa Legislature made substantial changes to the sex offender registry

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<sup>1</sup> Those grounds included banishment, ex post facto violations, and conflicts between Iowa Code Chapter 692A and Chapter 232.

law. Under the post-2009 statute, a juvenile adjudicated delinquent for a subject offense must register “unless the juvenile court waives the requirement and finds that the person should not be required to register under this chapter.” *Id.* § 692A.103(3) (2009). The statute also creates a procedure by which a juvenile, who is required to register, may request modification or suspension of the registration requirement. Iowa Code § 692A.103(5). Williams contends the 2009 statute creates two classes of persons: juveniles charged under the present statute, and juveniles, such as Williams, who were charged under the pre-2009 statute.

When a statute allegedly violates an individual’s equal protection rights, the first question is whether the statute makes a distinction between individuals who are similarly situated. *State v. Mitchell*, 757 N.W.2d 431, 436 (Iowa 2008). Section 692A.103(3) makes no such distinction. The statute applies retroactively to any juvenile offender who was required to be a registered offender on the date the new statute came into effect. Iowa Code § 692A.125(2)(a). Williams cannot complain the statute treats juveniles adjudicated delinquent prior to enactment of the 2009 statute differently from juveniles adjudicated delinquent after enactment of the statute when the changed statute applies retroactively.

We agree with the district court the statute, at the time of William’s adjudication, expressly granted the district court continuing jurisdiction over the registration requirement. The pre-2009 statute gave the district court discretion to waive the registration requirement if the juvenile court finds the “person” should not be required to register. Iowa Code § 692A.2(4) (1999). Use of the

word person, as opposed to child or juvenile, shows a clear intent to provide the juvenile court continuing jurisdiction over the issue even after the person is no longer a juvenile. See *In re B.A.*, 737 N.W.2d 665, 668 (Iowa Ct. App. 2007). Both the pre- and post-2009 statutes contain ongoing opportunities for Williams to achieve the ends he claims have been denied him—specifically, the temporary or permanent end of his registration requirement. Because the statute does not create two classes of individuals who are treated differently, there can be no equal protection violation.

### **B. Cruel and Unusual Punishment**

Williams argues the registration requirement, as well as the five-year prison sentence resulting from his failure to comply with the statute, constitutes cruel and unusual punishment under the United States Constitution.

The United States Constitution prohibits cruel and unusual punishment. U.S. Const. amend VIII. The prohibition applies to the states through the Fourteenth Amendment. *State v. Wade*, 757 N.W.2d 618, 623 (Iowa 2008). The purpose of the prohibition is to ensure the punishment for a crime is proportional to the gravity of the offense. *Id.* We presume a statutory punishment is constitutional and will only disturb a sentence when it is grossly disproportionate to the crime committed. *Id.*

It is well established that in Iowa the registration requirement itself is not a form of punishment. See *State v. Willard*, 756 N.W.2d 207, 212 (Iowa 2008) (“However, merely being subject to the residency requirement is not punishment.”). Our supreme court has noted other jurisdictions have reached

the same conclusion. See *State v. Pickens*, 558 N.W.2d 396, 400 (Iowa 1997). The Supreme Court has also found a similar requirement in Alaska does not constitute punishment. *Smith v. Doe*, 538 U.S. 84, 105 (2003). Nothing in Williams' individual characteristics or experiences changes this analysis. Because the requirement is not a form of punishment, it cannot be cruel and unusual.

Section 692A.111 categorizes a second or subsequent violation of the registration requirements as a class "D" felony. Iowa Code § 692A.111(1) (2011). Class "D" felonies are punishable by up to five years in prison. Iowa Code § 902.9(1)(e). Williams sentencing for violating the registration requirement is a form of punishment.

Analyzing whether the punishment imposed for violating the registration requirement is cruel and unusual begins with an examination of whether the harshness of the penalty grossly outweighs the gravity of the offense. *Sallis*, 786 N.W.2d at 516. We employ an objective analysis which does not consider Williams's individual circumstances. *Id.* at 517. The extended prison term is a result of the enhanced penalty portion of the statute. In this case Williams received an enhanced penalty because of multiple violations of the statute. Considering the goals of the statute, most importantly protection of the public and the need for law enforcement to track the residence of sex offenders, we find the five-year sentence was not so grossly disproportionate as to constitute cruel and unusual punishment.

**C. Due Process/Ineffective Assistance**

Williams argues the sentence imposed violates the Due Process Clauses of the Iowa Constitution and United States Constitution. He admits the claim was not raised and decided by the district court. It is fundamental that issues must be raised and decided by the district court before we will review them on appeal. *Lamasters v. State*, 821 N.W.2d 856, 862 (Iowa 2012). Because the issue was not raised and decided before the district court, we will not examine it.

In the alternative, Williams argues his trial counsel was ineffective for failing to raise the due process arguments before the district court. He also claims his counsel was ineffective for failing to file a motion to relieve Williams of the registry requirement. When a defendant wishes to have an ineffective assistance claim resolved on direct appeal, it is necessary that the defendant develop the record in a manner which allows the claim to be examined as needed. *State v. Johnson*, 784 N.W.2d 192, 198 (Iowa 2010). The record in this case is not sufficiently developed to resolve his claims on direct appeal. We are provided no evidence that would allow us to understand the reasons trial counsel did not ask the juvenile court to relieve Williams of the registration requirement. Accordingly, his ineffective assistance of counsel claims are preserved for postconviction relief.

**AFFIRMED.**