

IN THE COURT OF APPEALS OF IOWA

No. 3-938 / 12-2170
Filed October 23, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

GARY ALLEN WINNETT,
Defendant-Appellant.

Appeal from the Iowa District Court for Boone County, Michael J. Moon,
Judge.

A defendant appeals, claiming his sentence for first-degree murder is
illegal. **AFFIRMED.**

Gary Allen Winnett, Fort Dodge, appellant pro se.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant
Attorney General, and Adria Kester, County Attorney, for appellee.

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

POTTERFIELD, P.J.

Gary Winnett appeals the district court's denial of his motion to correct an illegal sentence. He was convicted of first degree-murder in 1987 and has been serving a life sentence for that crime. He claims this sentence is inherently flawed because he cannot be given his credit for the 208 days he spent in jail prior to sentencing because he is committed to prison until his death. He also argues the failure to credit him these 208 days is a violation of his rights to due process and equal protection.¹

Because we find the two statutory provisions that Winnett challenges are not in conflict and can be read in harmony, we reject Winnett's claim that his sentence is impossible, illegal, inherently flawed, and/or void. We also conclude his equal protection claim cannot succeed because the classification of felons does not create similarly-situated groups, and his procedural due process rights are not implicated because Winnett has not been deprived of a protected interest. Therefore, there is no constitutional violation in this case.

Winnett makes both statutory construction claims and constitutional claims. We review questions of statutory interpretation for correction of errors at law. *State v. Gonzalez*, 718 N.W.2d 304, 307 (Iowa 2006). However, our review of a constitutional challenge is de novo. *Id.*

¹ We note that nearly identical briefs have been previously filed with this court in other cases including, *State v. Walters*, 12-1155, 2013 WL 2146474 (Iowa Ct. App. May 15, 2013); *State v. Ruble*, 12-312, 2013 WL 2145757 (Iowa Ct. App. May 15, 2013); *State v. Goeders*, No. 12-1147, 2013 WL 2146470 (Iowa Ct. App. May 15, 2013); and *State v. Seiler*, 12-0880, 2013 WL 3864545 (Iowa Ct. App. July 24, 2013). We therefore adopt the same analysis in this case.

I. Statutory construction claim.

Winnett claims Iowa Code section 902.1 (1987)—which provides that offenders convicted of a class “A” felony are to be sentenced to life in prison and shall not be released unless the Governor commutes the sentence to a term of years—conflicts with section 903A.5—which provides, in part, that an inmate who was confined to a county jail prior to sentencing is to be “given credit for the days already served upon the term of the sentence.” Because of this alleged conflict, Winnett asserts his sentence, which confines him for life but yet gives him a credit of 208 days, is inherently flawed and as a result void.

We find no conflict in the statutes. Iowa Code section 903A.5 provides that the credit is to be given for days already served “upon the term of the sentence.” (Emphasis added.) The word “term” is not defined in the statute, but Black’s Law Dictionary defines “term” as “a fixed period of time.” Black’s Law Dictionary 1510 (8th ed. 2004); see also *State v. White*, 545 N.W.2d 552, 555–56 (Iowa 1996) (“When examining a statutory term, we give words their ordinary meaning, absent any legislative definition or particular meaning in the law. The dictionary is an acceptable source for the common meaning of a word.”).

Applying the definition of the word “term” to section 903A.5, we conclude the credit for time spent in jail prior to sentencing is only to be given for sentences that have a fixed period of time. Those sentences include those crimes other than class “A” felonies. See Iowa Code § 902.3 (“When a judgment of conviction of a felony other than a class ‘A’ felony is entered against a person, the court, in imposing a sentence of confinement, shall commit the person into the custody of the director of the Iowa department of corrections for an

indeterminate term, the maximum length of which shall not exceed the limits as fixed by section 902.9, unless otherwise prescribed by statute, nor shall the *term* be less than the minimum *term* imposed by law, if a minimum sentence is provided.” (emphasis added)). It is only if there is a fixed period of time that the department of corrections can calculate the jail credit to be given. Without a defined “term” or a “fixed period of time,” it would be a guessing game to calculate the date a felon is to be released.

Iowa Code section 902.1 does not provide a fixed period of time for those convicted of class “A” felonies. Instead the person is committed “into the custody of the director of the Iowa department of corrections for the rest of the defendant’s life. . . . [A] person convicted of a class ‘A’ felony shall not be released on parole unless the governor commutes the sentence to a *term* of years.” Iowa Code § 902.1(1) (emphasis added). The only way a person convicted of a class “A” felony can convert their sentence into a fixed period of time is to be granted a commutation from the Governor for a sentence with “a *term* of years.” *Id.* (emphasis added).

II. Constitutional claims.

Next, Winnett alleges his 208-day credit was taken away from him without due process and the disparate treatment of class “A” felons from other felons with respect to “jail credit” violates the Equal Protection Clause.²

² Winnett does not indicate whether he is bringing his claim under Iowa or federal equal protection grounds. “In this case, [Winnett] has not urged that we apply equal protection principles under the Iowa Constitution that depart from established federal principles. Therefore, we proceed to consider this case under the established federal equal protection principles, recognizing, however, that we may apply them differently under the Iowa Constitution.” See *NextEra Energy Res. LLC v. Iowa Utils. Bd.*, 815 N.W.2d 30, 45 (Iowa 2012).

In analyzing an equal protection claim, we first look to whether the groups being treated differently are similarly situated. *NextEra Energy Res. LLC*, 815 N.W.2d at 45.

Under equal protection, it is the nature of the offense and not its criminal classification that determines whether offenders are similarly situated. See *People v. Friesen*, 45 P.3d 784, 785 (Colo. Ct. App. 2001) (concluding that different felony classifications merely set forth the penalty ranges for classes of offenses and do not create classes of offenders, therefore, a defendant is only similarly situated with defendants who commit the same or similar acts).

State v. Wade, 757 N.W.2d 618, 625 (Iowa 2008). Because Winnett raises an equal protection claim regarding groups who are not similarly situated, his claim fails.

Further, Winnett's 208-day jail credit has not been taken from him as he alleges in his due process challenge.³ He argues, "The fact that giving Winnett his 208 days of jail time credit conflicts with his life sentence provides no reason for him to be denied an opportunity to challenge this taking of his liberty." We interpret this statement as a procedural due process challenge. "When a state action threatens to deprive a person of a protected liberty or property interest, a person is entitled to procedural due process." *Meyer v. Jones*, 696 N.W.2d 611, 625 (Iowa 2005). Prior to this deprivation, the person must be given some kind of notice or opportunity to be heard. *Id.* We find Winnett was not deprived of his

³ We note that until Winnett dies in jail, it cannot be said that the 208-day credit was taken from him. Under his argument, it is not until we know the date of his death that we could know whether the 119-day credit was not given. This fact raises ripeness issues. See *State v. Tripp*, 776 N.W.2d 855, 859 (Iowa 2010) ("A case is ripe for adjudication when it presents an actual, present controversy, as opposed to one that is merely hypothetical or speculative."). However, because this claim can be resolved through statutory construction, we decide to address the merits of the claim rather than dismiss on ripeness grounds.

208 days of jail time credit. The credit waits in abeyance should the Governor convert his sentence into a term of years through a commutation. If that occurs as provided by section 902.1, then the jail credit will be applied to the new sentence, which would be a fixed period of time. This new term sentence would then provide the department of corrections the ability to calculate a precise release date and apply the jail credit.

As we find no conflict between section 902.1 and section 903A.5, Winnett's sentence, which properly applies both of these sections, is not illegal, impossible, inherently flawed, or void as he contends. We also find no constitutional violation in the application of the two statutes to Winnett's case.

AFFIRMED.