

IN THE COURT OF APPEALS OF IOWA

No. 6-126 / 05-0364
Filed April 26, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHARLES EDWARD ROSS, III,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

The defendant appeals from his convictions and sentences by the district court. **CONVICTION AFFIRMED, SENTENCE VACATED IN PART.**

Linda Del Gallo, State Appellate Defender, and Nan Jennisch, Assistant Appellate Defender, for appellant.

Charles Edward Ross, III, pro se.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, John P. Sarcone, County Attorney, and James P. Ward, Assistant county Attorney, for appellee-State.

Considered by Sackett, C.J., and Vogel and Mahan, JJ.

VOGEL, J.

Charles Ross III appeals from his convictions and sentences by the district court as a habitual offender on two counts of second-degree robbery, each a class C felony in violation of Iowa Code sections 711.1, 711.3, and 902.8 (2003). Ross asserts on appeal that the district court erred when it imposed a fine of \$5000, plus thirty percent surcharge, for each count during sentencing. The State concedes that the district court was without authority to impose a fine in this case because neither the habitual offender section of 902.9(3) nor the underlying robbery statute at sections 711.1 and 711.3 provide for the imposition of a fine. See Iowa Code § 902.9(4) (outlining sentencing guidelines that include imposition of a fine for “a class ‘C’ felon, not a habitual offender”). We therefore vacate that portion of Ross’ sentence assessing a fine for each of the two counts of second-degree robbery.

We decline to further address Ross’ pro se claims regarding notice of the mandatory minimum sentence, application of section 902.12(5) and constitutionality of the habitual offender statute, as we conclude they are either not preserved for our review or are without merit.

CONVICTION AFFIRMED, SENTENCE VACATED IN PART.