

IN THE COURT OF APPEALS OF IOWA

No. 6-463 / 05-1906
Filed June 28, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROMY LYNN PETRA,
Defendant-Appellant.

Appeal from the Iowa District Court for Story County, William J. Pattinson,
Judge.

Romy Lynn Petra appeals her sentence for two counts of delivery of
methamphetamine. **AFFIRMED.**

Stephen M. Terrill of Terrill, Martens & Hulting Law Offices, Ames, for
appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney
General, Stephen Holmes, County Attorney, and Stephen A. Owen, Assistant
County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

HUITINK, J.

Romy Lynn Petra appeals her sentence, following her guilty plea, for two counts of delivery of less than five grams of methamphetamine, in violation of Iowa Code sections 124.401(1)(c)(6) and 124.413 (2005). We affirm.

I. Background Facts and Proceedings

The State charged Petra by trial information with two counts of delivery of five grams or less of methamphetamine, a class C felony, in violation of Iowa Code sections 124.401(1)(c)(6) and 124.413. In a third count, the State alleged sentencing enhancements of section 124.411 applied to Petra due to a previous felony drug conviction.

Pursuant to a plea agreement, Petra pled guilty to the two counts of delivery of methamphetamine, and the State dismissed the third count that would have permitted a sentencing enhancement. The State agreed to recommend a ten-year prison sentence on each count, to be served concurrently. In addition, the State indicated it was willing to permit Petra to offer information on drug activity in exchange for a recommendation at sentencing in mitigation of the mandatory one-third prison sentence provided by section 124.413.

At sentencing, Petra's counsel indicated the court could reduce the one-third minimum sentence, relying on Iowa Code section 901.10 (allowing the reduction of a defendant's mandatory one-third minimum term under certain conditions). The State, apparently in agreement with Petra's position, indicated to the court that Petra had offered information regarding her drug-related activities and those of others. The court, however, disagreed with the parties, concluding it did not have the statutory authority to reduce the mandatory

minimum in this case. The court sentenced Petra to two ten-year terms of incarceration, to be served concurrently.

Petra appeals, arguing the district court erred in failing to apply section 901.10(2) to reduce the applicable mandatory minimum sentences.

II. Standard of Review

We review the court's application of a sentencing statute for correction of errors at law. *State v. Beach*, 630 N.W.2d 598, 600 (Iowa 2001).

III. Discussion

Petra pled guilty to a violation of section 124.401(1)(c), a class "C" felony. Thus, she was subject to an indeterminate ten-year sentence. Iowa Code §§ 124.401(1)(c), 902.9(4). She was also subject to section 124.413, which requires that a person convicted under section 124.401(1)(c) must serve a minimum of one-third of the maximum indeterminate sentence imposed by law.

Iowa Code section 901.10 permits the modification of the sentencing scheme of sections 124.413 and 124.401 under certain circumstances. The section provides as follows:

1. A court sentencing a person for the person's first conviction under section . . . 124.413 . . . may, at its discretion, sentence the person to a term less than provided by the statute if mitigating circumstances exist and those circumstances are stated specifically in the record.

2. Notwithstanding subsection 1, if the sentence under section 124.413 involves an amphetamine or methamphetamine offense under section 124.401, subsection 1, paragraph "a" or "b", the court shall not grant any reduction of sentence unless the defendant pleads guilty. If the defendant pleads guilty, the court may, at its discretion, reduce the mandatory minimum sentence by up to one-third. If the defendant additionally cooperates in the prosecution of other persons involved in the sale or use of controlled substances, and if the prosecutor requests an additional reduction in the defendant's sentence because of such cooperation,

the court may grant a further reduction in the defendant's mandatory minimum sentence, up to one-half the remaining mandatory minimum sentence.

Iowa Code § 901.10(1), (2).

Petra concedes subsection 1 does not apply because this was not her first conviction under section 124.413. However, she contends subsection 2 does apply to permit a reduction of the mandatory minimum sentence because (1) the language “notwithstanding subsection 1” negates the requirement that the crime be a first offense, and (2) the limitation imposed by the first sentence of subsection 2 for violations of section 124.401(1)(a) or (b) “does not mean that the remaining portions of section 901.10(2) do not apply to violations of section 124.401(c).”

Our primary purpose in statutory construction is to determine legislative intent. *State v. Iowa Dist. Ct.*, 630 N.W.2d 778, 781 (Iowa 2001). We determine intent from the words used by the legislature. *Id.* When text of the statute is plain and its meaning clear, we are not permitted to search for meaning beyond its express terms. *State v. Tesch*, 704 N.W.2d 440, 451 (Iowa 2005). In addition, “legislative intent is to be gleaned from the statute as a whole, not from a particular part only.” *Iowa Dist. Ct.*, 630 N.W.2d at 781 (quoting *De More v. Dieters*, 334 N.W.2d 734, 737 (Iowa 1983)).

Reading section 901.10 as a whole, as we must, we cannot agree with Petra's tortured interpretation of the statute. The word “notwithstanding,” in the context of subsection two, means “despite.” *Iowa Dist. Ct.*, 630 N.W.2d at 782. “Thus, in spite of what is allowed in subsection 1 concerning ‘reduction of sentence,’ subsection 2 sets up *additional requirements* for defendants convicted

of a methamphetamine offense before such defendants may receive a ‘reduction in sentence.’” *Id.* (emphasis added). Thus, subsection 2 provides additional conditions for sentence reduction when a first-time offender commits certain methamphetamine and amphetamine offenses. It does not, as Petra suggests, remove the requirement that the crime be a first offense. In addition, a common sense reading of the plain language of subsection 2 leads us to conclude it applies only when the first-time offender commits an amphetamine or methamphetamine offense under sections 124.401(1)(a) or (b).

Petra was not a first-time offender and pled guilty to a violation of section 124.401(1)(c). Therefore, the district court correctly concluded the provisions of section 901.10 were not applicable to reduce the mandatory minimum sentence.

AFFIRMED.