

**IN THE COURT OF APPEALS OF IOWA**

No. 7-036 / 06-1151  
Filed March 14, 2007

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

**vs.**

**ROSS LEROY THORNTON,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Floyd County, Bryan H. McKinley,  
Judge.

Ross Thornton appeals from his judgment and sentence following his conviction of two counts of second-degree sexual abuse. **REVERSED IN PART AND REMANDED WITH DIRECTIONS.**

Patricia Reynolds, Acting State Appellate Defender, and Theresa R. Wilson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas W. Andrews, Assistant Attorney General, and Marilyn Dettmer, County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

**EISENHAUER, J.**

Ross Thornton appeals from his judgment and sentence following his conviction of two counts of second-degree sexual abuse. He contends the district court illegally sentenced him to immediately register as a sex offender and to pay the fees for the guardian ad litem for the victims. Our review is for errors at law. *Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001).

An illegal sentence is one that is not permitted by statute. *State v. Woody*, 613 N.W.2d 215, 217 (Iowa 2000). An illegal sentence is void and not subject to the usual concepts of waiver, whether from a failure to seek review or other omissions of error preservation. *Id.* It can, therefore, be corrected at any time. *Id.*

At the sentencing hearing, the district court ordered Thornton to “register with the Iowa Sex Offender Registry immediately upon sentencing.” The State requested the court order Thornton to pay the guardian ad litem’s fee of \$451.56. In its order rendering Thornton’s judgment and sentence, the district court ordered in pertinent part:

**2. ATTORNEY FEES.** Defendant is ordered to make reimbursement for Court appointed attorney fees. In addition, Defendant shall pay Guardian Ad Litem fees . . . .

**3. OTHER.** **The Court orders** that the Defendant participate in a full psychosocial evaluation, including an assessment for the appropriateness of hormonal therapy. Pursuant to the evaluation, Defendant shall receive sex offender treatment at the Mt. Pleasant facility if deemed appropriate. Defendant is subject to the mandatory civil penalties and shall immediately register on the sex offender registry. Defendant shall have no contact with the victim [] or his family . . . .

Thornton first contends the court erred in ordering him to immediately register on the sex offender registry. Iowa Code section 692A.2(1)(d) (2005)

requires a person to register as a sex offender upon his or her release from custody. Sex offenders are not required to register while incarcerated. *Id.* § 692A.2(4). Because the portion of the court's order requiring Thornton to "immediately" register as a sex offender is not authorized by statute, we conclude it is illegal. We vacate this portion of the sentence and remand to the district court to enter a sentence in conformance with chapter 692A.

Thornton also contends the court exceeded its authority in requiring him to pay the fee for the guardian ad litem appointed to represent the victims. Section 915.37 requires the appointment of a guardian ad litem for prosecuting child witnesses in cases such as this. No provision is made for who is to compensate the guardian ad litem. Section 910.2 requires "restitution be made by each offender to the victims of the offender's criminal activities . . . ." Section 910.1 defined "restitution" as follows:

"Restitution" means payment of pecuniary damages to a victim in an amount and in the manner provided by the offender's plan of restitution. "Restitution" also includes fines, penalties, and surcharges, the contribution of funds to a local anticrime organization which provided assistance to law enforcement in an offender's case, the payment of crime victim compensation program reimbursements, payment of restitution to public agencies pursuant to section 321J.2, subsection 9, paragraph "b", court costs including correctional fees approved pursuant to section 356.7, court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, and the performance of a public service by an offender in an amount set by the court when the offender cannot reasonably pay all or part of the court costs including correctional fees approved pursuant to section 356.7, or court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender.

After a conviction, the court must identify the "victim" entitled to restitution. *State v. Bonstetter*, 637 N.W.2d 161, 165 (Iowa 2001). A victim is "a person who has suffered pecuniary damages as a result of the offender's criminal activities."

Iowa Code § 910.1(5). A person may be “an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.” *Id.* § 4.1(20).

Once the victim is identified, the court must determine what losses may be considered in calculating the amount of restitution. *Bonstetter*, 637 N.W.2d at 165. Any damages that are causally related to the criminal activities may be included in the restitution order. *Id.* Damages not causally related to the crime are improper. *Id.* A restitution order is not excessive if it bears a reasonable relationship to the damage caused by the offender's criminal act. *Id.*

The State cites to several cases where the State has been considered the victim of the criminal act. However, these cases are distinguishable as they involve crimes against the State's property or involving State funds. See e.g. *State v. Wagner*, 484 N.W.2d 212, 220 (Iowa Ct. App. 1992) (involving damages caused during a prison riot); *State v. Tutor*, 538 N.W.2d 894 (Iowa Ct. App. 1995) (involving welfare fraud). The State is not the victim in this case; the victims are the boys Thornton sexually abused. Because the restitution statute does not explicitly provide for the repayment of guardian ad litem fees, we find no authority to require Thornton to pay the fee. See *State v. Anderson*, 164 N.W.2d 129, 133 (Iowa 1969) (holding the court has no authority to award costs against a defendant without statutory authorization). Accordingly, we reverse the court's order for repayment of the cost of the guardian ad litem.

**REVERSED IN PART AND REMANDED WITH DIRECTIONS.**