

IN THE COURT OF APPEALS OF IOWA

No. 7-408 / 06-1597
Filed October 12, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ALAN LEE SCOTT,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

The defendant appeals from his judgment and sentence following his conviction for attempting to entice a minor. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie L. Knipfer, Assistant State Appellant Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Linda M. Fangman, Assistant County Attorney, for appellee.

Heard by Zimmer P.J., and Eisenhauer, J. and Schechtman, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (2007)

EISENHAUER, J.

Alan Scott appeals from his judgment and sentence following his conviction for attempting to entice a minor in violation of Iowa Code section 710.10(3) (2005). He contends the district court erred in requiring him to register as a sex offender as a condition of his probation. Because the issue is not ripe for consideration, we affirm.

I. Background Facts and Proceedings. The facts of this case are undisputed and are summarized by the district court as follows:

On August 4, 2005, Sergeant Smock of the Black Hawk County Sheriff's Office, acting in an official capacity monitoring an on-line internet chat room, was contacted by Defendant, Alan L. Scott. Smock was signed onto the internet as "AllTiger43", in the guise of a 14 year old girl who lived in Cedar Falls, Iowa. Defendant Alan L. Scott is a 43 year old man who lives in Sioux City. During this first conversation the defendant clearly acknowledged, after asking "AllTiger43", that he knew "AllTiger43" was only 14 and that what he wanted to do with her was illegal.

On August 5, 2005, the defendant e-mailed a photo of his private area showing his penis to "AllTiger43". When he e-mailed this photo, Defendant clearly believed he was sending the photo to a 14 year old girl. Later that day the defendant contacted "AllTiger43" asking if she had received the photo.

On August 8, 2005, Defendant again made contact with "AllTiger43" asking about her receipt of additional improperly sexual photos he had sent. He additionally asked "AllTiger43", a person he believed to be a 14 year old girl, to engage in sex. He stated he could go to jail if seen with her because of her age.

On August 9 the defendant e-mailed additional photos of a sexual nature to "AllTiger43" and again asked "AllTiger43" to engage in sexual acts with him. Similar contacts were made on August 10 and 11, 2005. Additional contacts were made by Defendant to "AllTiger43" on August 18, 19, and 20, 2005. The conversations involved requests by Defendant for sex with the 14 year old. He made arrangements to meet the child in a park in Cedar Falls to engage in sex. He failed to follow through on that commitment because of a job conflict.

On August 22, 2005, the defendant again made contacts with "AllTiger43" and planned to come to Cedar Falls to engage in sex. On that day a search warrant was executed against Defendant's home in Sioux City and he was arrested.

On September 1, 2005, Scott was charged with enticing away a minor in violation of Iowa Code section 710.10(2). He waived his right to a jury trial and the district court heard the case on the minutes of testimony and exhibits. Scott argued he was only guilty of the lesser offense of attempting to entice a minor in violation of section 710.10(3). The court found Scott guilty of attempting to entice a minor in violation of 710.10(3) and sentenced him to one year imprisonment, suspending all but 180 days of the sentence. Scott was also ordered to register as a sex offender. Scott filed a motion to correct his sentence, arguing in part that he should not be required to register as a sex offender, claiming convictions under section 710.10(3) were excluded from the sex offender registry requirements of sections 692A.2 (requiring persons convicted of a criminal offense against a minor to register as sex offenders) and 692A.3 (defining “criminal offense against a minor”). The motion was denied.

II. Scope and Standard of Review. Sentencing decisions of the district court are reviewed for errors at law. Iowa R. App. P. 6.4; *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000). A sentence will not be upset on appellate review unless the defendant demonstrates an abuse of district court discretion or a defect in the sentencing procedure. *State v. Wright*, 340 N.W.2d 590, 592 (Iowa 1983).

III. Ripeness. The State argues that the issue here is not ripe for review because the court’s inclusion of Scott’s duty to register as a condition of probation was superfluous.

“A case is ripe for adjudication when it presents an actual, present controversy, as opposed to one that is merely hypothetical or speculative.” *State*

v. Iowa Dist. Ct., 616 N.W.2d 575, 578 (Iowa 2000). That rationale is “to protect [administrative] agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.” *Abbott Lab. v. Gardner*, 387 U.S. 136, 148-49, 87 S. Ct. 1507, 1515, 18 L. Ed. 2d 681, 691 (1967), *overruled on other grounds by Califano v. Sanders*, 430 U.S. 99, 105, 97 S. Ct. 980, 984, 51 L. Ed. 2d 192, 199 (1977).

In *State v. Bullock*, 638 N.W.2d 728, 735 (Iowa 2002), our supreme court held the sentencing court was without authority to determine the length of any future registration by the defendant. This is not a case involving a question as to the length of a future registration. However, the court's involvement in the registration process is restricted to (1) informing convicted defendants who are *not* sentenced to confinement of their duty to register and (2) the collection of specified information from such defendants. See Iowa Code § 692A.5(1). When a person who has been convicted of a criminal offense against a minor is released from prison the statute charges the sheriff, warden, or superintendent of the correctional facility to inform the person of their duty to register. *Id.* We therefore agree with the State that it was unnecessary for the district court to include Scott's duty to register. As a result, the issue is not ripe for our consideration. Scott may challenge the requirement with the Iowa Department of Public Safety if he is ordered to register as a sex offender for this offense after he has completed his incarceration. See *id.* § 692A.8.

Scott has filed a motion requesting this court take judicial notice of the fact he is currently registered as a sex offender. We grant the motion but note we do

not know the details of his registration and find the information does not change our analysis.

AFFIRMED.