

IN THE COURT OF APPEALS OF IOWA

No. 7-819 / 06-1100
Filed December 12, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ARTHUR ALAN POYNER,
Defendant-Appellant.

Appeal from the Iowa District Court for Montgomery County, Timothy O'Grady, Judge.

Defendant appeals the district court decision denying his request to modify a restitution order. **AFFIRMED.**

DeShawn L. Bird-Sell of DeShawn L. Bird-Sell, P.L.C., Glenwood, for appellant.

Thomas J. Miller, Attorney General, Martha Boesen, Assistant Attorney General, and Bruce E. Swanson, County Attorney, for appellee.

Considered by Mahan, P.J., and Zimmer, J., and Brown, S.J.*

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

BROWN, S.J.**I. Background Facts & Proceedings**

This challenge to Arthur Poyner's 1979 first-degree murder conviction, see *State v. Poyner*, 306 N.W.2d 716, 717 (Iowa 1981), concerns only the validity of the taxation of costs. Poyner was sentenced to spend the rest of his life in prison. *Poyner*, 306 N.W.2d at 717. The sentencing order provided, "The costs of this action are taxed to the defendant."

On February 11, 2002, Poyner was assessed court costs of \$7372.89. Poyner asked for an itemized list of the costs. The State then provided a list of the costs, which included juror fees, transcript costs, and attorney fees. Poyner requested a hearing pursuant to Iowa Code section 910.7 (2001). He claimed that under the doctrine of equitable estoppel the State should not be able to demand restitution due to the lengthy delay prior to the assessment of costs.

Prior to the hearing the State revised the amount due to \$6002.84. The district court determined the State was not barred by the doctrine of laches or estoppel. The court determined, however, that chapter 910 was not effective at the time Poyner was sentenced, and court costs should be assessed under section 625.1, which provides, "Costs shall be recoverable by the successful against the losing party."¹ The court concluded Poyner was not responsible for attorney fees (\$2669.31), because attorney fees were not part of the court costs that could be taxed under section 625.1.² The court determined Poyner should

¹ Chapter 910, dealing with restitution, was enacted in 1983. Section 625.1, however, was enacted in 1851, and remains in effect to this day.

² Attorney fees are not properly taxable under the provisions of section 625.1. *Woodbury County v. Anderson*, 164 N.W.2d 129, 133 (Iowa 1969).

be taxed court costs of \$3333.53. The district court's order was affirmed by the Iowa Court of Appeals. See *Poyner v. Iowa Dist. Court*, No. 02-1349 (Iowa Ct. App. July 10, 2003).

Poyner filed a motion for a correction of sentence under Iowa Rule of Criminal Procedure 2.24(5)(a).³ He claimed the 2002 restitution order was a sentencing order, and he was illegally sentenced. He asserted that under section 614.3, the statute of limitations for enforcement of civil judgments, the State was time-barred from requesting restitution from him. The district court found, "The supplemental order of court which established Poyner's restitution in 2002 was not a sentencing order but was a supplemental restitution order. Poyner was not illegally sentenced, and the 2002 supplemental restitution order was not illegally entered." Poyner appeals the decision of the district court.

II. Standard of Review

We review restitution orders for the correction of errors at law. Iowa R. App. P. 6.4; *State v. Petrie*, 478 N.W.2d 620, 622 (Iowa 1991).

III. Statutory Authority

Poyner contends the district court improperly assessed costs against him under section 625.1 because that section does not apply in criminal cases. He asserts there is no legal basis for taxing costs against him, and therefore taxing such costs constitutes an illegal sentence.

Initially, we note the recovery of costs in criminal proceedings is wholly statutory in nature. *Woodbury County v. Anderson*, 164 N.W.2d 129, 133 (Iowa

³ When the time to appeal a sentence has expired, a defendant may challenge a restitution order by filing a petition to correct an illegal sentence under Iowa Rule of Criminal Procedure 2.24(5)(a). See *State v. Jose*, 636 N.W.2d 38, 44 (Iowa 2001).

1969). In the absence of statutory authority a court has no power to tax costs against a criminal defendant. *Id.* Although the applicability of section 625.1 in criminal proceedings is questionable under *City of Cedar Rapids v. Linn County*, 267 N.W.2d 673, 675 (Iowa 1978),⁴ in 1979 when Poyner was sentenced, costs in criminal proceedings could be assessed against him under section 606.15(27). *Id.*

Section 606.15(27) (1979) provided for the assessment of costs by the clerk of the district court, as follows:

In criminal cases, the same fees for the same services as in suits between private parties. When judgment is rendered against the defendant, the fees shall be collected from such defendant.

This section was repealed in 1981. Its subject matter is now found in section 602.8106 (2001).

No matter which code sections were in effect when Poyner was sentenced - section 602.8106, 606.15(27), or 625.1 - the court has long had the authority to tax court costs against a criminal defendant. See *Hayes v. Clinton County*, 118 Iowa 569, 572, 92 N.W. 860, 861 (1902) ("That the provisions of the general chapter of the Code relating to costs, and the taxation thereof, govern in criminal as well as in civil cases, is conceded."); *State v. Belle*, 92 Iowa 258, 260, 60 N.W. 525, 526 (1894) ("It has been the uniform practice of the courts of this state, in

⁴ *City of Cedar Rapids*, 267 N.W.2d at 674, looked at several earlier cases which held a statute permitting the apportionment of costs, now section 625.3, did not apply in criminal proceedings. The predecessor to section 625.3 was combined in a code section with the predecessor to section 625.1. *City of Cedar Rapids*, 267 N.W.2d at 674. The supreme court came to the conclusion section 625.1 did not govern the taxation of costs in criminal proceedings. *Id.* at 675. The court noted costs in criminal proceedings could be taxed under section 606.15(27). *Id.*

criminal cases, on the conviction of the defendant, to tax the costs of the prosecution to him; and the power to do this is not questioned.”).

We conclude court costs were properly taxed against Poyner. We determine he did not receive an illegal sentence.

IV. Due Process

Poyner claims his due process rights were violated because the district court improperly applied an ex post facto law, chapter 910, to him. The district court did not address this issue, and we determine Poyner has not preserved the issue for our review. We do not consider an issue raised for the first time on appeal, even if it is of a constitutional dimension. *State v. Webb*, 516 N.W.2d 824, 828 (Iowa 1994).

V. Statute of Limitations

Poyner contends the district court erred by determining that the statute of limitations for the enforcement of civil judgments does not apply to orders of restitution. Before the district court Poyner claimed the restitution order was barred by the nine-year statute of limitations for judgments found in section 614.3. On appeal, Poyner asserts the applicable statute of limitations is section 614.1(6), which provides a suit on a judgment of a court of record must be brought within twenty years.

“[I]n Iowa, it is well recognized that a statute of limitations does not run against the state unless specifically provided by statute.” *Fennelly v. A-1 Machine & Tool Co.*, 728 N.W.2d 163, 169 (Iowa 2006). Poyner does not argue that these statutes of limitations specifically provide that they apply to the State.

We conclude the order for restitution in this case is not barred by the statute of limitations.

We affirm the decision of the district court.

AFFIRMED.