IN THE COURT OF APPEALS OF IOWA

No. 7-827 / 06-1461
Filed January 16, 2008

STATE OF IOWA,
Plaintiff-Appellant,

vs.

JOHN EDWARD COWLES,
Defendant-Appellee.

Appeal from the Iowa District Court for Davis County, Daniel P. Wilson, Judge.

The State seeks discretionary review of the district court's correction of an illegal sentence. **AFFIRMED.**

Thomas J. Miller, Attorney General, Mary Tabor and Karen Doland, Assistant Attorneys General, and Rick Lynch, County Attorney, for appellant State.

Justin Swaim of Swaim Law Firm, Bloomfield, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Baker, JJ.

VAITHESWARAN, J.

John Cowles pled guilty to second-degree sexual abuse for acts committed with his pre-teen daughter between April 9, 1996 and February 2, 1997.[1] The district court sentenced Cowles to a prison term of no more than twenty-five years. In imposing the sentence, the court cited Iowa Code section 902.12 (2003). As originally enacted, the provision required persons serving time for certain forcible felonies, including second-degree sexual abuse, to serve one hundred percent of the maximum term, subject to a fifteen percent sentence reduction for good conduct.[2] That provision became effective on July 1, 1996. 1996 Iowa Acts ch. 1151 § 3.7.

Cowles filed a pro se application for postconviction relief in which he challenged his sentence. Later, his attorney filed an application for correction of illegal sentence. He asserted that section 902.12 as applied to him violated the ex post facto clauses of the federal and state constitutions. *See* U.S. Const. art I, § 10; Iowa Const. art. 1, § 21.[3] The district court agreed, and corrected its prior

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[1] Cowles also pled guilty to other crimes not at issue on appeal.

[2] Section 902.12 stated:

> Except as otherwise provided in section 903A.2, a person serving a sentence for conviction of the following forcible felonies shall serve one hundred percent of the maximum term of the person's sentence and shall not be released on parole or work release . . . .

The exception contained in section 903A.2 stated in pertinent part:

> [I]f an inmate is sentenced under section 902.12, the total number of days which may be accumulated by the inmate to reduce the inmate's sentence shall not exceed fifteen percent of the inmate's total sentence of confinement.

[3] "Both the federal and state constitutions' Ex Post Facto Clauses "'forbid the application of a new punitive measure to conduct already committed,'" and may also be violated

sentencing order to delete the reference to section 902.12. The State sought and obtained discretionary review.

As a threshold matter, the State argues Cowles failed to preserve error on his challenge to the sentence. We disagree. Cowles unequivocally asserted the sentence imposed on him was not authorized by the statutes in effect at the time the abuse began. Therefore, the general rule that illegal sentences may be challenged at any time applies to his case. *See State v. Gordon*, 732 N.W.2d 41, 43-44 (Iowa 2007); *Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001).

Turning to the merits, the sex acts to which Cowles pled guilty began before July 1, 1996. Therefore, as the district court stated, "there was a period of time from April 9, 1996 to June 30, 1996 before which section 902.12, the Code, became effective." The court concluded,

> Under the circumstances, and where the record does not establish otherwise, this court must presume that the entry of judgment may have been based on pre-July 1, 1996 acts. Since Iowa Code Section 902.12 did not take effect until July 1, 1996, application of the statute to Cowles was unconstitutional, and therefore, illegal.

We discern no error in this reasoning.

AFFIRMED.

"'when a statute makes more burdensome the punishment for a crime after its commission.'" *State v. Seering*, 701 N.W.2d 655, 666 (Iowa 2005) (quoting *Schreiber v. State*, 666 N.W.2d 127, 129 (Iowa 2003)).