

IN THE COURT OF APPEALS OF IOWA

No. 8-924 / 08-0232
Filed January 22, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DERRICK JASON GRIESEHOP,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Thomas L. Koehler,
Judge.

Derrick Griesehop appeals the district court's order entered upon his
conviction of lascivious acts with a child in violation of Iowa Code section
709.8(3). **AFFIRMED AND REMANDED WITH DIRECTION.**

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

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney
General, and Harold Denton, County Attorney.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

VOGEL, P.J.

Derrick Griesehop appeals the district court's order entered upon his conviction of lascivious acts with a child in violation of Iowa Code section 709.8(3) (2005). He asserts that in addition to his original sentence, the district court imposed two illegal sentences: a ten-year special sentence in accordance with Iowa Code section 903B.2, and an additional two-year term of parole or work release in accordance with Iowa Code section 901A.2(8).

Our review of a challenge to the legality of a sentence is for errors at law. *Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001).

Griesehop pled guilty to the class "D" felony of lascivious acts with a child in violation of Iowa Code section 709.8. On July 1, 2005, Iowa Code section 903B.2 went into effect, which enhanced a sentence for a class "D" felony offense under chapter 709 by an additional ten years. Griesehop claims that the acts he committed occurred "during the year 2005," before the statute's effective date, therefore asserting the enhanced statute inapplicable to his conviction. We disagree.

During his plea agreement, Griesehop admitted that he committed "one or more sex acts with [his] daughter during the year 2005," and pled guilty as charged in the amended trial information to the offenses occurring "between and including January 1, 2005 and December 31, 2005." The minutes of testimony described the acts that Griesehop committed while he was living in Linn County. When asked during sentencing how often the abuse occurred, Griesehop responded: "Actually, it was in the beginning of 2005 because I moved away to Indiana in July" He did not state what date in July he moved and later

added that the abuse occurred “[s]ometimes every other day and then it wouldn’t be for a month, and then — It was never really a schedule.” Therefore, on any number of days in July, Griesehop could have continued committing the lascivious acts. The statute went into effect on July 1, 2005; his guilty plea encompassed the entire calendar year, through December 31, 2005. The crimes may have been committed before and after the effective date, but there is no question that his guilty plea included charges dated after the statute went into effect. Therefore, we affirm the special ten-year sentence for Griesehop’s conviction of lascivious acts with a child.

Griesehop also received an additional two years to his sentence under Iowa Code section 901A.2(8).¹ The State concedes that the district court mistakenly referenced this section in making its sentencing decision,² but contends that the sentence was correct under Iowa Code section 709.8.³ We agree that Griesehop was correctly sentenced, but that the appropriate code section should have been Iowa Code section 709.8, which contained a

¹ Iowa Code section 901A.2(8) provides in part:

In addition to any other sentence imposed on a person convicted of a sexually predatory offense pursuant to subsection 1, 2, or 3, the person shall be sentenced to an additional term of parole or work release not to exceed two years.

² Iowa Code section 901A.2(8) requires a prior conviction for this enhancement, which Griesehop did not have.

³ Iowa Code section 709.8, 2005 legislation, provides in part:

Any person who violates a provision of this section shall, upon conviction, be guilty of a class ‘D’ felony. A person who violates a provision of this section and who is sentenced to a term of confinement shall also be sentenced to an additional term of parole or work release not to exceed two years.

requirement for an additional two-year term of parole or work release. Therefore, we remand to district court to enter the proper code section in accordance with these findings.

The judgment of the district court is affirmed but remanded with further direction as herein provided.

AFFIRMED AND REMANDED WITH DIRECTION.