IN THE COURT OF APPEALS OF IOWA

No. 9-1067 / 09-1176
Filed February 24, 2010

STATE OF IOWA,
        Plaintiff-Appellant,

vs.

IOWA DISTRICT COURT FOR
FAYETTE COUNTY
(SHEILA SCOVEL),
        Defendant-Appellee.
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Appeal from the Iowa District Court for Fayette County, John Bauercamper, Judge.

The State appeals the district court's order transferring jurisdiction of this case to a magistrate for trial where the offense at issue is a serious misdemeanor. **WRIT SUSTAINED, ORDER ANNULLED, AND REMANDED.**

Mark C. Smith, State Appellate Defender, David Arthur Adams, Assistant State Appellate Defender, and Shannon Redd, Student Legal Intern, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, W. Wayne Saur, County Attorney, and Nathan Lein, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Doyle and Danilson, JJ.

DANILSON, J.

On June 24, 2009, the State filed a trial information charging Sheila Scovel with a second violation of the compulsory education provisions of Iowa Code sections 299.1 through 299.5. On July 1, 2009, Scovel filed a motion requesting the district court transfer jurisdiction of her case to a magistrate, arguing that the penalty provided for her crime in section 299.6 fell within the range of penalties applicable to simple misdemeanors pursuant to section 903.1(1)(a). The State resisted Scovel's motion. After a hearing before the bench, the district court granted Scovel's motion, stating: "The motion is granted and this case is transferred to the judicial magistrate for trial, because the maximum punishment for this offense is within the jurisdiction of the magistrate."

On August 3, 2009, the State petitioned the supreme court for a writ of certiorari. The motion was granted, and the proceedings were stayed. The State now appeals. We review issues of statutory interpretation for corrections of errors at law. *State v. Iowa Dist. Ct.*, 630 N.W.2d 778, 779 (Iowa 2001).

The State contends the district court acted illegally in transferring jurisdiction of Scovel's case to a magistrate, where section 602.6405(1) limits magistrates' criminal jurisdiction to simple misdemeanors, and where section 299.6 specifically classifies Scovel's crime as a "serious misdemeanor." The pertinent portion of section 299.6 states: "A person convicted of a second offense is guilty of a serious misdemeanor." *See* Iowa Code § 299.6 (2009).[1]

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[1] That section provides as follows:
Any person who violates a mediation agreement under section 299.5A, who is referred for prosecution under section 299.5A and is convicted of a violation of any of the provisions of sections 299.1 through

Both parties agree that this sentence is neither confusing nor ambiguous.

However, Scovel contends that the placement of this sentence is "odd," and the

specified penalties for a second offense fall within the prescribed penalties for a

simple misdemeanor not a serious misdemeanor pursuant to section 903.1.

A first offense violation of the truancy laws is classified as a simple

misdemeanor, and the specified penalty of "ten days or a fine not exceeding one

hundred dollars" clearly falls within the prescribed penalties for a simple

misdemeanor. *See id.* §§ 299.6, 903.1. A third offense violation of the truancy

laws is classified as a serious misdemeanor, and the specified penalties of "30

299.5, who violates any of the provisions of sections 299.1 through 299.5, or who refuses to participate in mediation under section 299.5A, for a first offense, is guilty of a simple misdemeanor.

A first offense conviction is punishable by imprisonment not exceeding ten days or a fine not exceeding one hundred dollars. The court may order the person to perform not more than forty hours of unpaid community service instead of any fine or imprisonment. *A person convicted of a second violation is guilty of a serious misdemeanor.*

A second offense conviction is punishable by imprisonment not exceeding twenty days or a fine not exceeding five hundred dollars, or both a fine and imprisonment. The court may order the person to perform unpaid community service instead of any fine or imprisonment.

A third or subsequent offense is a serious misdemeanor and a conviction is punishable by imprisonment not exceeding thirty days or a fine not exceeding one thousand dollars, or both a fine and imprisonment. The court may order the person to perform unpaid community service instead of any fine or imprisonment.

If community service is imposed as part of a sentencing order, the court may require that part or all of the service be performed for a public school district or nonpublic school if the court finds that service in the school is appropriate under the circumstances.

If a parent, guardian, or legal or actual custodian of a child who is truant, has made reasonable efforts to comply with the provisions of sections 299.1 through 299.5, but is unable to cause the child to attend school, the parent, guardian, or legal or actual custodian may file an affidavit listing the reasonable efforts made by the parent, guardian, or legal or actual custodian to cause the child's attendance and the parent, guardian, or legal or actual custodian shall not be criminally liable for the child's nonattendance.

Id. (emphasis added).

days in jail or a fine not exceeding one thousand dollars or both" also fall within the parameters of penalties for a serious misdemeanor. *See id.* Scovel maintains, however, that the legislature made "an obvious error" by describing a second offense as a serious misdemeanor, but specifying penalties for a simple misdemeanor. *See id.* Scovel argues the statute should be construed based upon its specified penalties and section 903.1; and thus, that a second offense violation of the truancy laws should be classified as a simple misdemeanor.

We have reviewed the arguments made by the parties in this case and have read the statute at issue as a whole. *See State v. Kambar*, 737 N.W.2d 297, 299 (Iowa 2007) (noting that when interpreting a statute, the court must read the statute as a whole). We conclude there is no ambiguity in the statutory classification of a second truancy offense under section 299.6. The general scheme of the statute is to impose graduated penalties with a first offense specifically classified as a simple misdemeanor; and all subsequent offenses classified as serious misdemeanors. *See id.* Although the sentence which classifies a second offense as a serious misdemeanor may be misplaced in the statute, there is no ambiguity, and the sentence should be enforced as written. *State v. Iowa Dist. Ct.*, 730 N.W.2d 677, 679 (Iowa 2007).

Additionally, section 903.1(1) sets forth the general sentencing provisions for simple and serious misdemeanors. *See* Iowa Code § 903.1(1)(a), (b). However, that section only applies where "a specific penalty is not provided for" in the statute that defines and classifies the crime. *Id.* § 903.1(1). Here, section 299.6 sets forth the specific penalty for defendant Scovel's crime (a second

truancy offense), and classifies the offense as a serious misdemeanor. In reference to section 903.1(1), our supreme court has stated:

> [T]he language "[i]f . . . a specific penalty is not provided" contemplates that the legislature may, in other statutes, authorize different penalties for specific offenses to the exclusion of the penalties provided in the general misdemeanor sentencing statute.

State v. Heinz, 465 N.W.2d 863, 865 (Iowa 1991). In this situation, section 903.1 is not determinative of the misdemeanor classification of the truancy offense charged. Rather, section 299.6 controls, and pursuant to that section, a second offense is a serious misdemeanor.

We agree with the State that the district court erred in transferring this case to a magistrate. A magistrate's jurisdiction in respect to criminal trials is limited to simple misdemeanors. *See* Iowa Code § 602.6405(1). The district court erred in ordering otherwise. We sustain the writ of certiorari, annul the order of the district court, and remand to the district court for further proceedings.

WRIT SUSTAINED, ORDER ANNULLED, AND REMANDED.