

IN THE COURT OF APPEALS OF IOWA

No. 9-185 / 08-1046
Filed April 22, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHANDOR LAMONT GARDNER,
Defendant-Appellant.

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

Defendant appeals the district court's sentence imposing a \$1000 fine following his guilty plea to robbery in the second degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Martha J. Lucey, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and James Katcher, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Potterfield and Mansfield, JJ.

MANSFIELD, J.

Chandor Lamont Gardner appeals the fine portion of his sentence on the grounds that the district court erred by imposing the fine and by failing to state reasons for the imposition of the fine. We affirm.

I. Background Facts and Proceedings

On the morning of December 15, 2007, Jaynene Johnson was shopping in the Salvation Army Thrift Store in Waterloo. As Johnson shopped for books, Gardner suddenly grabbed Johnson's purse, and a brief struggle ensued. During the struggle, Johnson was pushed into a table, and her watch was broken, cutting her wrist. Johnson screamed, and several customers came to her aid by calling the police and chasing Gardner as he attempted to flee.

Gardner was apprehended by police a short distance away from the store. After being transported to the police station, Gardner waived his *Miranda* rights¹ and admitted to grabbing Johnson's purse, running from the store, and throwing away the purse and its contents.

Gardner was charged with robbery in the second degree in violation of Iowa Code sections 711.1 and 711.3 (2007). He pled guilty and was sentenced to a term of incarceration not to exceed ten years with a seventy percent mandatory minimum and \$1000 fine. Gardner appeals the fine portion of his sentence. He argues that the prosecutor had recommended the fine be suspended and the district court should have provided reasons for imposing a fine. See Iowa R. Crim. P. 2.23(3)(d).

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d. 694 (1966).

II. Discussion

Robbery in the second degree is a class “C” felony. Iowa Code § 711.3. Under Iowa law any person, who is not a habitual offender, convicted of robbery in the second degree “shall be confined for no more than ten years, and in addition shall be sentenced to a fine of at least one thousand dollars but not more than ten thousand dollars.” *Id.* § 902.9(4).

Gardner recognizes the district court had no discretion regarding the imposition of the incarceration with the seventy percent mandatory sentence; however, he contends the district court had discretion to suspend the fine under Iowa Code section 907.3.

Section 907.3 provides the trial court, upon a plea of guilty upon which a judgment of conviction may be rendered, may exercise its discretion to defer judgment, defer sentence, or suspend sentence under certain circumstances. *Id.* § 907.3. However, the legislature has eliminated this sentencing discretion in forcible felony cases. *Id.* Robbery is a forcible felony. *Id.* § 702.11. Therefore, the district court had no discretion to defer or suspend the sentence and was obligated to impose a fine of at least \$1000 in addition to incarceration. *See id.* § 902.9(4) (stating “shall be confined . . . , and in addition shall be sentenced to a fine”).

Further, the district court’s imposition of a \$1000 fine was the mandatory minimum amount under section 902.9(4). As such, there could be no abuse of discretion since the district court lacked the power to enter a less severe sentence. *See State v. Matlock*, 304 N.W.2d 226, 228 (Iowa 1981).

There is also no conflict between our decision here and that of the Iowa Supreme Court in *State v. Ayers*, 590 N.W.2d 25, 32 (Iowa 1999). Subsequent to *Ayers*, the legislature amended Iowa Code section 902.9 (1999), so it now provides for minimum fines to be imposed in class “C” and class “D” felonies. The forcible felony sentence in *Ayers* did not require the imposition of a fine in addition to imprisonment because the statutory language in section 902.9 at the time stated a class “C” felon “shall be confined for no more than ten years, and in addition *may* be sentenced to a fine.” (Emphasis added.) The use of the word “may” made the fine optional. Section 902.9(4) (2007) now reads that a class “C” felon “shall be confined for no more than ten years, and in addition *shall* be sentenced to a fine of at least one thousand dollars.” (Emphasis added.) Furthermore, as previously noted, the sentencing statute, Iowa Code section 907.3, excepts forcible felonies from crimes for which the court can exercise discretion to defer judgment or to suspend sentences.

Simply put, the \$1000 fine is not discretionary—because of the current wording of Iowa Code section 902.9(4)—nor may it be suspended—because robbery is a forcible felony.

Accordingly, we affirm the sentence imposed by the trial court.

AFFIRMED.