IN THE COURT OF APPEALS OF IOWA

No. 9-972 / 09-0582
Filed February 10, 2010

STATE OF IOWA,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR FLOYD COUNTY,
Defendant.

Appeal from the Iowa District Court for Floyd County, Peter B. Newell, Judge.

The State filed a petition for writ of certiorari, which our supreme court granted, claiming the district court exceeded its authority in sentencing a defendant. **WRIT ANNULLED.**

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, and Jesse Marzen, County Attorney, for plaintiff.

Mark C. Smith, State Appellate Defender, and Bradley M. Bender, Assistant Appellate Defender, for defendant.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

DOYLE, J.

The State filed a petition for writ of certiorari, which our supreme court granted, claiming the district court exceeded its authority in sentencing Virgil Houdek Jr. for operating while intoxicated (OWI), third offense. The State argues a sentencing condition imposed by the court was not authorized by the applicable sentencing statute, Iowa Code section 904.513 (2007). We conclude the sentence imposed by the court was authorized by the statute and annul the writ of certiorari.

I. Background Facts and Proceedings.

Houdek was charged with OWI, third offense, in violation of Iowa Code section 321J.2 and driving while barred in violation of section 321J.21 in February 2008. Pursuant to a plea agreement, Houdek pled guilty to the OWI charge, and the State dismissed the driving while barred charge. At the sentencing, the district court committed Houdek to the custody of the director of the Iowa Department of Corrections (DOC) for an indeterminate term not to exceed five years to be "serve[d] in an OWI Prison Program" under Iowa Code chapter 321J. *See* Iowa Code §§ 321J.2(2) (sentencing alternatives), 904.513(1) (continuum of OWI programming under chapter 321J). The court further ordered Houdek was to be "placed on pre-placement supervision" with the Iowa Department of Correctional Services (DCS) "pending bed space."

More than one month later, the State filed an application to correct the court's judgment and sentence. The State asserted Houdek did not "qualify for the 321J treatment program at this time" because he had "previously been sentenced to a 321J.2 OWI treatment program." According to an "OWI Program

Worksheet" attached to the State's application, Houdek was required to serve a short term of incarceration before he could be placed in a treatment facility. Houdek resisted the State's application, and a hearing was held. At the hearing, the prosecutor argued that "since the Court sentenced the Defendant to the Prison Program, I think it's up to the Department of Corrections to decide . . . about the direct placement or the incarceration pending the placement." The district court disagreed and ordered the DOC to "abide by the Court's previous order."

The State filed a petition for a writ of certiorari with our supreme court, which was granted. The State claims the district court exceeded its sentencing authority in ordering Houdek to be released to the supervision of the DCS "pending bed space" at a community residential facility.

II. Scope and Standards of Review.

Certiorari is a law action to determine whether a tribunal has exceeded its jurisdiction or otherwise acted illegally. *State v. Iowa Dist. Ct. for Monroe County*, 630 N.W.2d 778, 779 (Iowa 2001). A sentence not authorized by statute is illegal, and we can sustain a writ on this basis. *See id.* at 782. "Our scope of review depends upon the nature of the issues raised in the certiorari proceeding." *Id.* at 779. Because the State's claim involves the court's application of a sentencing statute, our review is for correction of errors at law. *See State v. Beach*, 630 N.W.2d 598, 600 (Iowa 2001).

III. Discussion.

The question presented here requires us to determine what sentencing options the legislature intended to afford the district court under Iowa Code

section 904.513. We are guided in that determination by the following well-established principles of statutory interpretation:

> "When a statute is plain and its meaning clear, courts are not permitted to search for meaning beyond its express terms." However, if a statute is ambiguous, such that its meaning is open to more than one reasonable interpretation, this court may utilize the rules of statutory construction. The ultimate goal is "a reasonable interpretation and construction which will best effect the purpose of the statute, seeking to avoid absurd results."

State v. Iowa Dist. Ct. for Mahaska County, 620 N.W.2d 271, 273 (Iowa 2000) (internal citations omitted).

We begin our analysis with section 321J.2(2)(c)(1), which provides that a person who operates a motor vehicle while intoxicated commits

> [a] class "D" felony for a third offense and each subsequent offense, and shall be committed to the custody of the director of the department of corrections for an indeterminate term not to exceed five years, shall be confined for a mandatory minimum term of thirty days, and shall be assessed a fine of not less than three thousand one hundred twenty-five dollars nor more than nine thousand three hundred seventy-five dollars.
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> (1) If the court does not suspend a person's sentence of commitment to the custody of the director of the department of corrections under this paragraph *"c"*, the person shall be assigned to a facility pursuant to section 904.513.

Because the district court did not suspend Houdek's sentence, we turn to section 904.513, entitled "Assignment of OWI violators to treatment facilities." That statute provides in relevant part that

> [o]ffenders convicted of violating chapter 321J, sentenced to the custody of the director, and awaiting placement in a community residential substance abuse treatment program for such offenders shall be placed in an institutional substance abuse program for such offenders within sixty days of admission to the institution or as soon as practical. . . .
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> . . . .
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> (4) Assignment may also be made on the basis of the offender's treatment program performance, as a disciplinary

> measure, for medical needs, and for space availability at community residential facilities. *If there is insufficient space at a community residential facility, the court may order an offender to be released to the supervision of the judicial district department of correctional services,* held in jail, or committed to the custody of the director of the department of corrections for assignment to an appropriate correctional facility *until there is sufficient space at a community residential facility.*

Iowa Code § 904.513(1)(b)(2), (4) (emphasis added).

The State initially argues the district court's sentencing order releasing Houdek to the supervision of the DCS was not authorized by section 904.513 because "defendant's placement by the court in this case was not contingent on insufficient space." That argument is simply incorrect.

In its oral sentencing pronouncement, the district court ordered:

> I will impose an indeterminate term not to exceed five years that you may serve in an OWI Prison Program. And I will order that *pending placement becoming available in such a program*, you will be placed under the pre-placement supervision of the Department of Correctional Services.

(Emphasis added.) And in its written sentencing order, the court again stated that Houdek was to be "placed in an appropriate 321J prison program . . . . Defendant placed on pre-placement supervision *pending bed space*." (Emphasis added.) The court clearly made Houdek's release to the DCS contingent upon "insufficient space at a community residential facility," as authorized by section 904.513(1)(b)(4). *See Beach*, 630 N.W.2d at 601 (noting a court could release a defendant "under supervision by correctional services" until sufficient space became available at a residential facility); *see also* Iowa Admin. Code r. 201-47.2(2) ("When there is insufficient bed space in the community-based correctional program to accommodate the offender, the court may order the

offender to be released . . . to the supervision of the judicial district department of correctional services. . . .”). Its decision to do so “fulfilled the evident legislative intent of providing secure but local treatment and supervision,” thereby enabling Houdek to maintain his employment and housing. *Beach*, 630 N.W.2d at 601; *see also* Iowa Admin. Code r. 201-47.2(1) (stating an offender shall be assigned “to the least restrictive and most cost-effective component of the continuum for the purposes of risk management, substance abuse treatment, education, and employment”).

Houdek asserts the State’s real issue with the sentence imposed by the district court “is that the Department of Corrections policy requires a minimum sixty days incarceration for anyone who has previously attended the OWI program before placement in an OWI treatment program.” That assertion is borne out by the State’s application to correct the judgment and sentence, which stated: “Defendant does not qualify for the 321J treatment program at this time . . . . Defendant does qualify for short-term incarceration followed by placement at a residential treatment facility.” As noted earlier, an “OWI Program Worksheet” attached to the State’s application provided that offenders who had “previously been sentenced to a 321J.2 OWI Treatment program” were required to go to “short-term incarceration (minimum 60 days),” followed by placement in a community residential treatment facility.

The State defends its position by arguing that the sentencing options set forth in section 904.513 “are available *only when the DOC has made the initial decision* to place a defendant at a community residential facility.” According to the State, the court “could order [Houdek] to be placed under the supervision of

the district department of correctional services only if the DOC had first decided to place him in a community residential facility." We do not believe this argument is supported by the applicable sentencing statutes.

Section 321J.2(2)(c)(1) states that when a court chooses to not suspend a person's sentence, as here, "the person *shall* be assigned to a facility pursuant to section 904.513." (Emphasis added.) Section 904.513(1)(b)(2) likewise provides:

> Offenders convicted of violating chapter 321J, sentenced to the custody of the director, and awaiting placement in a community resident substance abuse treatment program . . . *shall be placed in an institutional substance abuse program for such offenders within sixty days of admission to the institution or as soon as practicable*.

(Emphasis added.) These statutes "require[ ] the Department of Corrections to place an OWI offender such as [Houdek] in a community-based treatment facility." *State v. Kapell*, 510 N.W.2d 878, 879-80 (Iowa 1994). Although section 904.513(1)(b)(1) gives the DOC the responsibility to choose the particular community residential facility, the "statutorily-mandated outcome of a sentence to the Department of Corrections" under sections 321J.2 and 904.513 is assignment to a facility. *Id.* at 880. Nothing in either statute required Houdek to serve a short term of incarceration before placement in a facility, although that was an option the district court could have chosen if it so desired under section 904.513(1)(b)(4). *See Beach*, 630 N.W.2d at 601 (noting under a former version of section 904.513 that a "court electing to bypass incarceration in favor of community-based sentencing had three alternatives," one of which was to require the defendant to be held in jail until space in the facility became available).

IV. Conclusion.

For the foregoing reasons, we conclude the district court did nothing improper in committing Houdek to the custody of the DOC and providing that he be released to the supervision of the DCS pending sufficient space in a community residential facility. That sentencing option was authorized by section 904.513; thus, the sentence imposed by the district court was not illegal. *See State v. Halliburton*, 539 N.W.2d 339, 343 (Iowa 1995) ("An illegal sentence is one not authorized by statute; it is void."). The State's arguments to the contrary are without merit. We therefore annul the writ of certiorari.

WRIT ANNULLED.