IN THE COURT OF APPEALS OF IOWA

No. 0-806 / 10-0564
Filed January 20, 2011

MATTHEW J. LAMMERS,
Appellee,

vs.

STATE OF IOWA,
Appellant.

Appeal from the Iowa District Court for Allamakee County, Richard D. Stochl, Judge.

The State appeals the district court's grant of a prisoner's postconviction relief application. **AFFIRMED.**

Thomas J. Miller, Attorney General, William A. Hill, Assistant Attorney General, and Mary Jane White, County Attorney for appellant.

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellee.

Cory Thein, Dubuque, for appellee.

Heard by Sackett, C.J., and Vogel and Vaitheswaran, JJ. Tabor, J., takes no part.

VAITHESWARAN, J.

We must decide whether Matthew Lammers is obligated to participate in a specified "community-based correctional program"[1] prescribed by statute. The issue was raised by Lammers in a postconviction relief application. The facts giving rise to the issue are undisputed. Those facts are as follows.

Lammers was sentenced to indeterminate prison terms of no more than ten years for second-degree robbery and no more than five years for second-degree theft, to be served consecutively. After several years, the Iowa Board of Parole granted Lammers a work release, with the proviso that he spend twelve months at a residential facility administered by a judicial district department of correctional services. In imposing this requirement, the State invoked a statutory provision, Iowa Code section 905.11 (2009). Lammers filed an application for postconviction relief contending this provision did not apply to him. The district court agreed, with Lammers concluding "the statute does not require that he remain in a residential facility for the first year after his release." The State appealed.

Iowa Code section 905.11 provides:

> A person who is serving a sentence under section 902.12, the maximum term of which exceeds ten years, and who is released on parole or work release shall reside in a residential facility operated by the district department for a period of not less than one year.

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[1] "Community-based correctional program" is defined as

> correctional programs and services, including but not limited to [a program] . . . designed to supervise and assist individuals . . . who are on probation or parole in lieu of or as a result of a sentence of incarceration imposed upon conviction of any of these offenses, or who are contracted to the district department for supervision and housing while on work release.

Iowa Code § 905.1(2) (2009).

The cross-referenced provision, section 902.12, prescribes mandatory minimum sentences for certain crimes. The listed crimes include second-degree robbery but not second-degree theft. Iowa Code § 902.12. Second-degree robbery carries a prison term not exceeding ten years. *See id.* §§ 711.3, 902.9(4), 902.12(5).

The State concedes the maximum sentence for second-degree robbery does not exceed ten years, but argues the two sentences Lammers was ordered to serve consecutively may be aggregated to arrive at a "maximum term" of fifteen years. We need go no further than the express statutory language of section 905.11 to conclude otherwise.

Section 905.11 plainly and unambiguously states that a one-year stay at a residential facility is only required of a person who is serving "a sentence under section 902.12," the maximum term of which "exceeds" ten years. *See State v. Anderson*, 782 N.W.2d 155, 158 (Iowa 2010) (stating when a statute is plain and its meaning clear, courts are not permitted to search for meaning beyond its express terms). The only sentence Lammers was serving under section 902.12 was his second-degree robbery sentence. Because this sentence did not exceed ten years, section 905.11 was inapplicable and the State could not require Lammers to spend one year in a residential facility.

In reaching this conclusion, we have considered the State's argument that another code provision, section 901.8, supports its reading of section 905.11. That provision states: "Except as otherwise provided in section 903A.7, if consecutive sentences are specified in the order of commitment, the several terms shall be construed as one continuous term of imprisonment." This

language does not assist the State because there is no cross-reference to section 901.8 in section 905.11 and no mention of "one continuous term of imprisonment." Additionally, the State's argument would require us to read out the words actually used in section 905.11—"a sentence under section 902.12." We are not at liberty to do so. *See State v. Truesdell*, 679 N.W.2d 611, 617 (Iowa 2004) ("We apply statutes as written by our legislature . . . .").

We have also considered *Popejoy v. State*, 727 N.W.2d 383 (Iowa Ct. App. 2006), an opinion cited by the State to support its reading of section 905.11. That opinion is inapposite, as it addressed a different statute containing different language. Notably, that statute, unlike section 905.11, was found to be ambiguous. *See Popejoy*, 727 N.W.2d at 386–87 (interpreting Iowa Code section 709.8 and concluding "as applied to cases involving concurrent sentences the phrase 'the original term of confinement' means the entire term for which a person is sentenced to prison, including not only any sentence(s) for lascivious acts with a child but also any unrelated concurrent sentence(s)").

We conclude the district court did not err in finding section 905.11 inapplicable to Lammers. For that reason we affirm the grant of Lammers's application for postconviction relief.

AFFIRMED.