

IN THE COURT OF APPEALS OF IOWA

No. 3-1047 / 12-2312
Filed December 5, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

THOMAS DESHAWN HOLMES,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer,
Judge.

Defendant appeals the district court's denial of his pro se motion to correct
his allegedly illegal sentence. **AFFIRMED.**

Samantha Gronewald of Sullivan & Ward, P.C., West Des Moines, for
appellant.

Thomas J. Miller, Attorney General, Sheryl Soich, Assistant Attorney
General, Thomas J. Ferguson, County Attorney, and Kimberly Griffith, Assistant
County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Danilson, JJ.

DANILSON, J.

Thomas Holmes appeals the district court's denial of his pro se motion to correct his allegedly illegal sentence. On appeal, he maintains the sentencing court imposed a sentence that is not permitted by statute and the proper remedy is to order a new sentencing hearing. Because we find the error Holmes alleges was unambiguously clerical in nature and has already been corrected by the district court's order, we affirm.

I. Background Facts and Proceedings.

On July 6, 1999, the State filed a trial information charging Holmes with kidnapping in the first degree, in violation of Iowa Code section 710.2(3),(4) and 710.2 (1999), and with robbery in the first degree, in violation of Iowa Code sections 711.1(1),(2),(3), and 711.2. Holmes entered a plea of not guilty to both of the charges.

On April 24, 2000, following a bench trial, the district court pronounced Holmes guilty of both the charged offenses.¹ During the pronouncement the court referenced section 710.2(3) and (4) in regard to the kidnapping in the first degree charge. The court again referenced section 710.2(3) and (4) at the sentencing hearing and in the written sentencing order.

Holmes filed a pro se motion to correct illegal sentence on July 25, 2012. In the motion Holmes noted that section 710.2(3) and (4) did not exist under the Iowa Criminal Code. He claimed the sentence was thus in violation of the Fifth

¹ Holmes does not argue his sentence for robbery in the first degree was illegal.

and Fourteenth Amendments and asked for it to be vacated. The district court held a hearing on the motion on December 14, 2012.

Following the hearing, on December 18, 2012, the district court entered an order on Holmes' motion. In it, the court overruled Holmes' request for dismissal of the kidnapping charge, determining the sentence was not illegal. The court also concluded the clerical error should be corrected and stated, "The court's Ruling and Sentencing Order in Case No. FECR086886 are corrected to reference a conviction of Kidnapping in the First Degree, in violation of section 710.2, 710.1(3)(4), Code of Iowa." Holmes appeals.

II. Standard of Review.

We review challenges to the illegality of a sentence for errors at law. *Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001).

III. Discussion.

On appeal, Holmes contends he was sentenced to an illegal sentence because it was not done in accordance with statutory requirements. See *State v. Thompson*, 39 N.W.2d 637, 640 (Iowa 1949) ("In this State all criminal procedure is statutory."); see also Iowa Code § 901.6 ("In every case in which a judgment is entered, the court shall include in the judgment entry the number of the particular section of the Code and the name of the offense under which the defendant is sentenced . . ."). He correctly notes he was sentenced for kidnapping in the first degree under sections that do not exist in the code and argues the only remedy is to remand for a new sentencing hearing. Holmes relies on a statement made by the supreme court in *State v. Suchanek*, 326 N.W.2d 263, 265–66 (Iowa

1982), to support his position: “[T]he imposition of a sentence that is not permitted by statute is an illegal sentence, and such sentence is void and must be vacated. . . . In such event, the sentence must be vacated and a new sentence must be rendered.”

We are not convinced Holmes sentence was illegal. Holmes does not claim here, nor did he in his pro se motion, that he was unaware what crime he was charged with—namely kidnapping in the first degree—and what specific elements were involved in the State’s theory of prosecution at the time of trial. As the district court noted in its ruling:

From the time the trial information was filed on July 6, 1999, until Mr. Holmes was sentenced on May 22, 2000, Mr. Holmes never complained that he was unaware of the nature of the charges against him. Neither party ever raised the typographical error issue, and the court also did not correct the scrivener’s error in the specifications portion of the trial information. The trial transcript shows clearly that Mr. Holmes and his attorneys were well-aware that Mr. Holmes was facing the charge of Kidnapping in the First Degree, and were well-aware of the specific elements involved in the State’s theory of prosecution. Those specifications are obviously set forth in section 710.1, Code of Iowa, rather than 710.2, Code of Iowa.

In the trial court’s Ruling and Order filed April 25, 2000, the trial court accurately set forth the applicable law, and specifically identified the specifications relied upon under section 710.1 and 710.2, Code of Iowa (pages 11,12,13).^[2] Unfortunately, the

² In its written “ruling and order” from April 25, 2000, the district court stated:

The State must prove all of the following elements of Kidnapping in the First Degree:

(1) On or about the 25 day of June, 1999, the defendant confined Donna Starkey, or removed her from one place to another.

- (2) The defendant did so with the specific intent to
- (a) inflict serious injury upon Donna Starkey;
 - (b) subject Donna Starkey to sexual abuse;
 - (c) secretly confine Donna Starkey

(3) The defendant knew he did not have the consent of Donna Starkey to do so.

scrivener's error set forth in the specifications portion of the trial information carried over into the court's Ruling on page 15, and again carried over onto the court's Sentencing Order, notwithstanding the fact that the undersigned was mindful of the fact that the kidnapping specifications relied upon were pursuant to section 710.1(3), (4)^{3]} and not 710.2(3), (4). Mr. Holmes is correct that section 710.2 has no subparagraphs at all.

The court correctly referred to the crime as first-degree kidnapping throughout Holmes' criminal proceeding. The court also sentenced Holmes to a term of life imprisonment, as is appropriate for class "A" felonies such as first degree kidnapping. See Iowa Code §§ 710.2, 902.1(1). The record reflects the error made by the sentencing court was clerical. See *State v. Hess*, 533 N.W.2d 525, 527 (Iowa 1995) ("An error is clerical in nature if it is not the product of judicial reasoning and determination.").

When an error is clerical in nature, the proper remedy is to correct the judgment entry. See *id.* ("[W]hen the record unambiguously reflects that a clerical error has occurred, we will direct the district court to enter a nunc pro tunc order to correct the judgment of entry."). In the present case, the district court has already corrected the sentencing order with its ruling on Holmes' pro se motion.

(4) As a result of the confinement or removal, Donna Starkey suffered serious injury, or was sexually abused.

³ Iowa Code section 710.1(3) and (4) provide:

A person commits kidnapping when the person either confines a person or removes a person from one place to another, knowing that the person who confines or removes the other person has neither the authority nor the consent of the other to do so; provided, that to constitute kidnapping the act must be accompanied by one or more of the following:

(3) The intent to inflict serious injury upon such person, or to subject the person to a sexual abuse.

(4) The intent to secretly confine such person.

Because the error alleged by Holmes was unambiguously clerical in nature and has already been corrected by the district court's order, we affirm.

AFFIRMED.