IN THE COURT OF APPEALS OF IOWA

No. 0-979 / 10-0660
Filed March 7, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JUSTEN ALAN FAGAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Iowa County, Nancy A. Baumgartner, Judge.

The defendant appeals the district court's dismissal of a motion challenging the Iowa Department of Correction's determination that he was subject to a mandatory minimum sentence. **SENTENCE VACATED AND REMANDED FOR RESENTENCING.**

Mark C. Meyer, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, Tim McMeen, County Attorney, and Patrick A. McElyea, Assistant County Attorney, for appellee.

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

VAITHESWARAN, J.

Justen Fagan, who was sentenced in 2001 following his conviction for first-degree robbery, challenged the Iowa Department of Correction's determination that he was subject to a mandatory minimum sentence. The district court dismissed his motion, and Fagan appeals.

I. Prior Proceedings

Fagan was under the jurisdiction of the Illinois correctional system when he was charged with first-degree robbery in Iowa. Fagan filed a "Demand for Speedy Trial Pursuant to Agreement on Detainers" requesting a "final disposition of all detainers based on untried indictments, informations or complaints within the State [of Iowa]."[1] An Iowa jury found him guilty of first-degree robbery.[2]

At the sentencing hearing, the prosecutor recommended that Fagan "receive the minimum mandatory 25-year prison sentence," noting this was the "minimum mandatory sentence allowed by law." Fagan's attorney agreed the sentence was "mandatory." Nonetheless, the district court sentenced Fagan to "an indeterminate term, the maximum length of which shall not exceed twenty-five years." Additionally, the court stated, "Any term of incarceration may be reduced by as much as half of the maximum sentence because of statutory good conduct time, work credits and program credits."

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[1] A detainer has been defined by our court as "'a notification filed with the institution in which a prisoner is serving a sentence, advising that [the prisoner] is wanted to face pending criminal charges in another jurisdiction.'" *State v. Widmer-Baum*, 653 N.W.2d 351, 354 n.2 (Iowa 2002) (citation omitted).

[2] Fagan was also found guilty of other related charges that are not at issue on appeal.

Following sentencing, Fagan was returned to Illinois to complete his prison sentence there.[3] He was then sent back to Iowa to begin serving his sentence for first-degree robbery. At that time, the Department of Corrections (DOC) determined Fagan was subject to the mandatory minimum sentence required by the versions of Iowa Code sections 902.12 and 903A.2(1)(b) (2001) in effect when he was originally sentenced.

As noted, Fagan filed a motion challenging that determination. He asserted the district court failed to impose the mandatory minimum sentence the DOC was now seeking to enforce and claimed an attempt to correct the sentence would violate the Interstate Agreement on Detainers (IAD). *See* Iowa Code ch. 821. He requested an order (1) requiring the DOC to apply his sentence without the mandatory minimum or (2) dismissing his conviction and sentence for the asserted violation of the IAD.[4]

Following a hearing, the district court denied the motion. The parties agree the issues presented are all legal and should be reviewed for errors at law. *See* Iowa R. App. P. 6.907; *Veal v. State*, 779 N.W.2d 63, 64 (Iowa 2010).

II. Legality of Sentence

As a threshold matter, the State argues Fagan waived his challenge to the sentence by not raising it on direct appeal. Fagan responds that the district court failed to impose a sentence required by statute, rendering the sentence illegal and subject to attack at any time.

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[3] Fagan filed a direct appeal and application for postconviction relief, both of which were unsuccessful. *See Fagan v. State*, No. 07-1421 (Iowa Ct. App. May 29, 2009); *State v. Fagan*, No. 02-575 (Iowa Ct. App. Aug. 14, 2002).

[4] Fagan later advised the district court that he was only asking to have the mandatory minimum sentence removed and was not asking to dismiss his conviction and sentence.

We agree with Fagan. *See* Iowa R. Crim. P. 2.24(5)(*a*) ("The court may correct an illegal sentence at any time."); *State v. Bruegger*, 773 N.W.2d 862, 871 (Iowa 2009) (stating a challenge to an illegal sentence "includes claims that the court lacked the power to impose the sentence or that the sentence itself is somehow inherently legally flawed, including claims that the sentence is outside the statutory bounds"); *State v. Ross*, 729 N.W.2d 806, 809 (Iowa 2007) (characterizing defendant's challenge to the district court's application of the mandatory minimum sentence in section 902.12 as a challenge to an illegal sentence). As Fagan's motion was an unequivocal challenge to the legality of his sentence, he was not obligated to raise the issue on direct appeal in order to preserve error. We proceed to the merits.

When Fagan was sentenced, Iowa Code section 902.12 provided that persons convicted of specified forcible felonies, including first-degree robbery, had to serve "one hundred percent" of their maximum term except as otherwise provided in section 903A.2.[5] Section 903A.2, in turn, authorized reductions of the sentence for good behavior, but limited the reduction to 15% of the sentence. *See State v. Iowa Dist. Ct.*, 616 N.W.2d 575, 579 (Iowa 2000). "The practical effect of these two statutes [was] to require that a defendant convicted of a forcible felony listed in section 902.12 . . . serve at least 85% of his sentence." *Id.* As these statutes imposed "a mandatory minimum sentence," the district court was obligated "to determine their applicability to a particular defendant." *Id.*

[5] Section 902.12 has since been amended and now states: "A person serving a sentence for conviction of the following felonies . . . shall be denied parole or work release unless the person has served at least seven-tenths of the maximum term of the person's sentence."

The State suggests the district court fulfilled its obligation by stating that Fagan was "required to serve whatever time is required by the statutes of the State of Iowa on this charge." We are not persuaded that this broad statement could be construed as a pronouncement of the mandatory minimum sentence applicable to first-degree robbery. The court was required to specifically cite section 902.12, the provision that subjected Fagan to a mandatory minimum term. *See* Iowa R. Crim. P. 2.23(3)(*d*) (requiring that in every case in which judgment is entered, "the court shall include in the judgment entry the number of the particular section of the Code under which the defendant is sentenced"). The court did not do so. The problem was compounded by the court's statement that Fagan's sentence could be reduced by earned good time, and its omission of any reference to the 15% cap on this reduction.

In sum, the district court failed to impose the mandatory minimum sentence prescribed by section 902.12 and its sentence was accordingly illegal. In an effort to avoid resentencing on the mandatory minimum, Fagan contends the resentencing is precluded by the IAD. We turn to that issue.

III. IAD

The IAD "creates uniform procedures for the efficient disposition of charges against a prisoner held in one jurisdiction and wanted in another jurisdiction on untried criminal charges." *State v. Johnson*, 770 N.W.2d 814, 820 (Iowa 2009) (citing Iowa Code § 821.1, art. I); *see also State v. Widmer-Baum*, 653 N.W.2d 351, 355–56 (Iowa 2002) (discussing these "central provisions of the IAD").

Fagan argues that returning him "to district court and vacating his original sentence would violate [his] right under the IAD to a speedy trial and final disposition before he was returned to prison in Illinois in 2001."[6] *See* Iowa Code § 821.1, art. III(a) (requiring prisoner to be brought to trial on any "untried indictment, information or complaint" within 180 days after delivery of written notice of place of imprisonment and request "for a final disposition"). We rejected a similar argument in *State v. Bates*, 689 N.W.2d 479, 480 (Iowa Ct. App. 2004). There, we found Bates was not protected by the IAD because he had already been convicted of the crime "and was merely awaiting sentencing." *Bates*, 689 N.W.2d at 480. We reasoned:

> As stated in Article I of section 821.1, the purpose of the Interstate Agreement on Detainers was to address the uncertainties stemming from "untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions. . . ." Defendant was not facing any uncertainty with respect to the merits of the charge against him.

Id. at 480–81.

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[6] The State asserts that we need not address this issue because it is unclear from the record that a detainer was lodged. In *State v. Fagan*, No. 02-575 (Iowa Ct. App. Aug. 14, 2002), we stated that "[b]ecause defendant was incarcerated in the State of Illinois, not Iowa, at the time of the filing of his trial information, he was subject to the Interstate Agreement of Detainers Act, under Iowa Code section 821.1 (Article III)." Based on this statement and the State's assumption in its trial papers that a detainer was indeed lodged, we will proceed with this issue.

The State also argues that Fagan's request for final disposition was flawed "because it was not accompanied by the required certificate of the Illinois authorities having custody of defendant." *See State v. Bass*, 320 N.W.2d 824, 828 (Iowa 1982) (finding defendant had not triggered the speedy trial provisions of the IAD because he did not cause the required certificate to be issued by the officials of the incarcerating state). Fagan notes that he subsequently corrected this oversight.

The same is true here. Fagan completed his sentence in Illinois and was sentenced in Iowa close to a decade ago. As the matter was resolved, resentencing would not violate the "final disposition" provision of the IAD.[7]

IV. Disposition

We vacate Fagan's illegal sentence and remand to the district court for imposition of the mandatory minimum sentence under sections 902.12 and 903A.2. *See Iowa Dist. Ct.*, 616 N.W.2d at 581 (vacating sentence where mandatory minimum was not imposed and remanding for resentencing).

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[7] We also note that Fagan is not imprisoned in a correctional institute in another jurisdiction, arguably an additional reason for denying his request for relief. *See, e.g.*, *Sackman v. State*, 277 S.W.3d 304, 307 (Mo. Ct. App. 2009) (holding prisoner did not remain within the protection of the IAD after he was released on parole from prison in Illinois directly to Missouri to serve time for sentences that had been running while he was incarcerated in Illinois).