IN THE COURT OF APPEALS OF IOWA

No. 3-467 / 12-1151
Filed July 10, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMES A. SINCLAIR,
Defendant-Appellant.

STANLEY C. BURN,
Interested Party-Appellee.

Appeal from the Iowa District Court for Polk County, William A. Price, District Associate Judge.

A criminal defendant challenges the five-year extension of a no-contact order. **AFFIRMED.**

Dean A. Stowers and Nicholas Sarcone of Stowers Law Firm, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, and John Sarcone, County Attorney, for appellee-State.

Benjamin D. Bergmann of Parrish Kruidenier Dunn Boles Gribble Parrish Gentry & Fisher, L.L.P., Des Moines, for appellee Stanley C. Burn.

Heard by Eisenhauer, C.J., and Vaitheswaran and Tabor, JJ.

TABOR, J.

This appeal addresses the five-year extension of a no-contact order under Iowa Code section 664A.8 (2011). James Sinclair contends he should not be subject to the extension because the statute did not authorize the order, the requesting party was not a victim, the extension request was untimely, and his due process rights were violated. But before we reach those claims, we must decide where appellate jurisdiction lies.

First, we read Iowa Code sections 602.6306 and 602.6405 as providing us jurisdiction to hear the appeal. Second, we find the extension was timely requested by the victim of Sinclair's offense and properly approved by the court. Accordingly, we affirm the court's extension of the no-contact order.

I. Background Facts and Proceedings

On July 29, 2010, James Sinclair tried to enter Stanley Burn's residence without permission. Sinclair yelled outside the home to be let inside. The State originally charged Sinclair with harassment in the third degree. Iowa Code § 708.7(4) (2009). On August 11, 2010, the trial court entered a no-contact order as a condition of release under Iowa Code section 811.2. In a ruling entered on November 22, 2010, the court determined Sinclair violated the no-contact order on November 2, 2010, and sentenced him to five days in jail.

On February 28, 2011, the parties reached a plea bargain in which Sinclair agreed to plead to an amended charge of disorderly conduct. In an order issued on that date, the court noted the parties agreed to extend the no-contact order for one year and, at the parties' request, added an odd modification: the prosecutor's

approval was necessary before police could arrest Sinclair for violating the no-contact order.

On March 25, 2011, Sinclair entered an *Alford* plea[1] and was sentenced to pay a fine of $250 plus a surcharge and court costs. The sentencing order stated the "No-contact order remains in effect for one (1) year pursuant to the terms of Court's previous order date 02-28-11, [the] Prosecutor . . . must be contacted prior to Defendant's arrest for an alleged no-contact order violation."

On March 16, 2012, Burn filed a motion to extend the no-contact order. During a June 4, 2012 hearing, the district associate judge extended the no-contact order until March 25, 2017. Eight days later Sinclair filed a notice of appeal.

In screening the appeal, the Supreme Court raised the issue of jurisdiction on its own motion and asked the parties to file jurisdictional statements. After receiving those statements, the Supreme Court ordered the jurisdictional issue to be decided as part of the appeal and then transferred the case to our court.

II. Scope of Review

We review questions of subject matter jurisdiction for correction of legal error. *State v. Erdman*, 727 N.W.2d 123, 125 (Iowa 2007). Because this appeal concerns statutory interpretation, we also review the no-contact order extension for correction of errors at law. *See* Iowa R. App. P. 6.907; *State v. Wiederien*, 709 N.W.2d 538, 540 (Iowa 2006).

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[1] An *Alford* plea allows a defendant to consent to the imposition of a sentence without admitting to participation in the crime. *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

III. Analysis

A. Does the Court of Appeals Have Jurisdiction?

The question of appellate jurisdiction depends on what authority the district associate judge exercised when extending the no-contact order. Iowa Code section 602.6306(4) (2011) provides where district associate judges are "exercising the jurisdiction of magistrates" appeals are "governed by the laws relating to appeals from judgments and orders of magistrates"; i.e. the district court should hear the issue on appeal. *See* Iowa Code §§ 602.6306(4), 602.6405. Where district associate judges are "exercising any other jurisdiction," appeals are "governed by the laws relating to appeals from judgments or orders of district judges"; i.e. the Court of Appeals should hear the issue on appeal. *Id.* § 602.6306(4); *see also id.* § 602.5103(2).

Neither Sinclair nor Burn provided persuasive arguments for whether the Court of Appeals has or lacks jurisdiction. The State waived its opportunity to file a jurisdictional statement. No Iowa authority addresses what jurisdiction a district associate judge is exercising when deciding whether to extend a no-contact order in a simple misdemeanor case.

To determine whether the district associate judge exercised the jurisdiction of a magistrate when extending the no-contact order under section 664A.8 in this case, we look to section 602.6405, which lists the proceedings that can be handled by magistrates. Section 602.6405 grants magistrates jurisdiction over "simple misdemeanors regardless of the amount of the fine." The section also provides that criminal procedure before magistrates is governed by a

number of code chapters, including chapter 811, which embraces conditions of pretrial release.

While the underlying offense in this case was a simple misdemeanor, we are not persuaded the legislature's grant of subject matter jurisdiction for magistrates to hold trials in simple misdemeanor cases impliedly confers unlimited jurisdiction for magistrates to extend no-contact orders arising in such cases for additional five-year terms, without limit on the number of modifications, under section 664A.8. *Cf. Erdman*, 727 N.W.2d at 125–26 (holding district associate judges' jurisdiction to hear indictable misdemeanors and class "D" felonies did not confer jurisdiction to enter judgment in those cases on bail bonds in excess of $10,000).

Significantly, section 602.6405 does not mention chapter 664A. Because of this omission, the district associate judge exercised "any other jurisdiction" instead of the jurisdiction of a magistrate. The Court of Appeals then has jurisdiction to consider the appeal. *See* Iowa Code § 602.6306(4).

Finding we have jurisdiction to proceed, we next consider the substantive issues of whether the no-contact order was properly requested by the victim and approved by the court.

B. Did the District Associate Judge Have Authority to Extend the No-Contact Order?

Section 664A.8 allows either the State or the victim of an offense referred to in section 664A.2 to seek an extension of a no-contact order. Section 664A.2 lists specific violations in chapters 708 and 709 covered under chapter 664A and

then expands the reach to "any other public offense for which there is a victim."[2] The charge in question, disorderly conduct, is defined as follows: "A person commits a simple misdemeanor when the person does any of the following: . . . (2) Makes loud and raucous noise in the vicinity of any residence . . . which causes *unreasonable distress* to the *occupants* thereof." *Id.* § 723.4(2) (emphasis added).

Sinclair argues disorderly conduct is a "victimless crime," Burn is not a victim under section 664A.1(3), and therefore, Burn did not have standing to seek an extension of the no-contact order under section 664A.8. Sinclair asserts disorderly conduct "is not the type of offense to which Chapter 664A was intended to apply because it is not a crime against a person like the listed statutory offenses." Sinclair uses *State v. Hall* to support his position. 740 N.W.2d 200, 203 (Iowa Ct. App. 2007). He contends *Hall* makes clear "Chapter 664A 'no-contact' orders are distinct creatures of statute that must not be confused with other authority for such orders such as the authority to impose no contact as a probation condition."

Burn contends he is a victim because he is the protected party of the no-contact order and underwent emotional harm and, therefore, may ask to extend the protection under section 664A.8. Burn argues disorderly conduct is not a victimless crime because as an element of the offense the State must show

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[2] Public offense is defined as "that which is prohibited by statute and is punishable by fine or imprisonment." Iowa Code § 701.2. Victim is defined as "a person who has suffered physical, emotional, or financial harm as a result of a public offense." *Id.* § 664A.1(3).

"occupants" were distressed by the defendant's conduct. The district court agreed with Burn, as do we.

The no-contact order may be extended under the broad provision of section 664A.2—"any public offense for which there is a victim"—because disorderly conduct is a public offense and there is a victim, Burn. Disorderly conduct is a public offense because it is prohibited by statute, section 723.4(2), and punishable by fine or imprisonment, meeting the definition of public offense as defined in section 701.2.

Burn occupied the residence and suffered unreasonable distress from Sinclair's "loud and raucous noise." Accordingly, Burn qualified as the victim of disorderly conduct. The entry and request for modification of the no-contact order illustrates Burn underwent emotional harm and continues to fear Sinclair's presence. Burn also meets the definition for victim in section 664A.1(3): "a person who has suffered . . . emotional . . . harm as a result of a public offense." Because Burn is a victim he has standing to extend the no-contact order under section 664A.8.

The holding in *State v. Hall* does not support Sinclair's conclusion. 740 N.W.2d at 203. The dispute in *Hall* was whether the offense, sexual exploitation of a minor, fell within "any other public offense for which there is a victim." *See* Iowa Code § 664A.2. The *Hall* court concluded section 728.12(3) did not identify a victim as defined in section 664A.1(3). We reach a different conclusion for disorderly conduct. Moreover, *Hall* concerns the imposition of a no-contact order rather than its modification. In the present case, the authority for the original

entry of the no-contact order is clear: as a condition of release under section 811.2. Sinclair claims he "does not believe . . . the order was necessarily legally authorized, but he agreed to it as part of negotiations." But the record does not reflect his attempt to challenge the original entry of the no-contact order, nor does Sinclair raise this issue on appeal.[3] *Hall* does not control the question whether the court could extend the duration of the order under section 664A.

In his brief, Sinclair alleges the no-contact order did not meet the definition at section 664A.1(1) because it did not include any "refrain from harassing" language. We find this argument unpersuasive. When a judge enters a no-contact order, the judge intends the defendant to have no contact with and to refrain from harassing "the alleged victim, persons residing with the alleged victim, or members of the alleged victim's family." *See* Iowa Code § 664A.1(1). The judge does not need to recite the definitional language for the no-contact order to have full effect.

D. Timeliness of Victim Extension of the No-Contact Order.

A victim or the State may apply for a section 664A.8 extension within ninety days before expiration of the modified no-contact order. The court memorialized the parties' plea agreement in an order issued on February 28, 2011. The court entered a sentencing order on March 25, 2011, which stated: "[the] No-Contact Order remains in effect for one (1) year pursuant to the terms of the court's previous order dated 2-28-11." The victim requested the extension

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[3] At trial Sinclair disputed if the no-contact, entered under section 811.2, could be extended under section 664A. He did not raise this contention in his appeal brief.

of the no-contact order on March 16, 2012. Sinclair argues the no-contact order expired on February 28, 2012, and Burn did not make a timely extension request.

Based on the plain language of the orders, we find the court formally entered the no-contact order on March 25, 2011. Thus the no-contact order expired March 25, 2012, and Burn timely requested the five-year extension. The language in the February 28, 2011 order is tentative, for example, stating "[t]he defendant will either pay a $250.00 fine, plus surcharge and court costs, or accept a deferred judgment with a $250.00 civil penalty." The February 28, 2011 order contains other provisional language in regard to the no-contact order, stating "the parties agreed to extend the existing order for one (1) year" whereas the March 25, 2011 order states the "[n]o-contact order remains in effect for one (1) year." The provisional language implies the March 25, 2011 order adopted the requirements stated in the February 28 order rather than the expiration date of February 28. Therefore, Burn timely sought extension of the no-contact order.

E. Sinclair's Due Process Argument.

Sinclair argues extension of the no-contact order is a violation of his due process rights for three reasons: he lacked notice the no-contact order was subject to section 664A.8, the extension constitutes a modification of a final sentence, and the extension constitutes a modification of a binding plea agreement.

Burn argues Sinclair failed to preserve this argument. Alternatively, Burn argues because Sinclair is an attorney, he or his counsel could understand the ramifications of a no-contact order. Burn also suggests Sinclair's remedy would

be an ineffective-assistance claim raised in a postconviction relief action. Additionally, Burn emphasizes the court's "inherent authority to exercise its plenary power to enter the No-Contact Order." *See* Iowa Code § 664A.5.

Sinclair does not point to any place in the record where he raised this constitutional claim or where the court decided it.[4] Accordingly, we cannot find that Sinclair preserved error on the due process claim.

AFFIRMED.

[4] In the error preservation section of his brief, Sinclair's counsel cites to a three-page memorandum filed in the district court, which does not include the words "due process" or "constitution." His brief also lists 23 transcript pages, with no precise citations to the lines where the issue was preserved, in contravention of Iowa Rule of Appellate Procedure 6.904(4).