IN THE COURT OF APPEALS OF IOWA

No. 3-634 / 12-0880
Filed July 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LEROY SEILER,
Defendant-Appellant.

Appeal from the Iowa District Court for Hancock County, Rustin Davenport, Judge.

A defendant appeals claiming his sentence is illegal. **AFFIRMED.**

Dylan J. Thomas, Mason City, for appellant.

Leroy Seiler, Fort Dodge, appellant pro se.

Thomas J. Miller, Attorney General, and William A. Hill, Assistant Attorney General, for appellee.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

DANILSON, J.

Fred Seiler appeals the district court's denial of his motion to correct an illegal sentence. He was convicted of first degree murder in 1982 and has been serving a life sentence for the conviction. He claims the mittimus issued following his sentence states he is to be committed to the department of corrections for the rest of his life *less 134 days* for time spent in jail prior to sentencing. He claims this sentence is inherently flawed because he cannot be given credit for the 134 days he spent in jail prior to sentencing because he is committed until his death. He also argues the failure to credit him these 134 days is a violation of his right to due process and equal protection. We conclude the sentence is not illegal or unconstitutional as Seiler will be granted credit in the event his sentence is commuted to a term of years. In a separate issue we conclude the district court did not abuse its discretion in denying Seiler a restitution hearing. We affirm.

Because we find the two statutory provisions that Seiler challenges are not in conflict and can be read in harmony, we reject Seiler's claim that his sentence is impossible, illegal, inherently flawed, and/or void. We also conclude his equal protection claim cannot succeed because the classification of felons does not create similarly situated groups, and his procedural due process rights are not implicated because Seiler has not been deprived of a protected interest. Therefore, there is no constitutional violation in this case.

Seiler makes both statutory construction claims and constitutional claims. We review questions of statutory interpretation for correction of errors at law.

State v. *Gonzalez*, 718 N.W.2d 304, 307 (Iowa 2006). However, our review of a constitutional challenge is de novo. *Id.*

I. Statutory construction claim.

Seiler claims Iowa Code section 902.1 (1985)—which provides that offenders convicted of a class "A" felony are to be sentenced to life in prison and shall not be released unless the governor commutes the sentence to a term of years—conflicts with section 903A.5[1]—which provides, in part, that an inmate who was confined to a county jail prior to sentencing is to be "given credit for the days already served upon the term of the sentence." Because of this alleged conflict, Seiler asserts his sentence, which confines him for life but yet gives him a credit of 134 days, is inherently flawed and as a result void.

We find no conflict in the statutes. Iowa Code section 903A.5 provides that the credit is to be give for days already served "upon the *term* of the sentence." (Emphasis added.) The word "term" is not defined in the statute, but Black's Law Dictionary defines "term" as "a fixed period of time." Black's Law Dictionary 1510 (8th ed. 2004); *see also State v. White*, 545 N.W.2d 552, 555–56 (Iowa 1996) ("When examining a statutory term, we give words their ordinary meaning, absent any legislative definition or particular meaning in the law. The dictionary is an acceptable source for the common meaning of the word.").

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[1] Section 903A.5 did not exist in the 1982 code, which was the code applicable to Seiler's conviction and sentence. However, in his brief, Seiler makes no reference to which code year he is seeking redress under. In 1982, section 246.38 contained the substance of what was later moved to section 903A.5 by the time of the publication of the 1985 code. The pertinent portions of section 903A.5 have remained largely unchanged to present, so we will use the 1985 code for this opinion.

Applying the definition of the word "term" to section 903A.5, we conclude the credit for time spent in jail prior to sentencing is only applicable to sentences that have a fixed period of time. Those sentences include those crimes other than class "A" felonies. *See* Iowa Code § 902.3 ("When a judgment of conviction of a felony other than a class 'A' felony is entered against a person, the court, in imposing a sentence of confinement, shall commit the person into the custody of the director of the Iowa department of corrections for an indeterminate *term*, the maximum length of which shall not exceed the limits as fixed by section 902.9, unless otherwise prescribed by statute, nor shall the *term* be less than the minimum *term* imposed by law, if a minimum sentence is provided.") (emphasis added). It is only if there is a fixed period of time that the department of corrections can calculate the jail credit to be given. Without a defined "term" or a "fixed period of time," it would be a guessing game to calculate the date a felon is to be released.

Iowa Code section 902.1 does not provide a fixed period for those convicted of class "A" felonies. Instead the person is committed "into the custody of the director of the Iowa department of corrections for the rest of the defendant's life. . . . [A] person convicted of a class 'A' felony shall not be released on parole unless the governor commutes the sentence to a *term* of years." Iowa Code § 902.1(1) (emphasis added). The only manner a person convicted of a class "A" felony may convert their sentence into a fixed period of time is by a commutation of the sentence by the governor for a sentence with "a

term of years." *Id*. (emphasis added). If Seiler is granted a commutation of his sentence, he would then be entitled to credit for time served.

II. Constitutional claims.

Next, Seiler alleges this 134-day credit was taken away from him without due process and the disparate treatment of class "A" felons from other felons with respect to "jail credit" violates the Equal Protection Clause.[2]

In analyzing an equal protection claim, we first look to whether the groups being treated differently are similarly situated. *NextEra Energy Res*., 815 N.W.2d at 45.

> Under equal protection, it is the nature of the offense and not its criminal classification that determines whether offenders are similarly situated. *See People v*. *Friesen*, 45 P.3d 784, 785 (Colo. Ct. App. 2001) (concluding that different felony classifications merely set forth the penalty ranges for classes of offenses and do not create classes of offenders, therefore, a defendant is only similarly situated with defendants who commit the same or similar acts).

State v. Wade, 757 N.W.2d 618, 625 (Iowa 2008). Because Seiler raises an equal protection claim regarding groups who are similarly situated, and he is unable to say he is similarly situated with non-class "A" felons, his claim fails.

Further, Seiler's 134-day jail credit has not been taken away from him as

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[2] Seiler does state he is bringing his claim under both the Iowa and United States Constitution, however, "in this case, [Seiler] has not urged that we apply equal protection principles under the Iowa Constitution that depart from established federal principles." Therefore, we proceed to consider this case under the established federal equal protection principles, recognizing, however, that we may apply them differently under the Iowa Constitution." *NextEra Energy Res. LLC v. Iowa Utils. Bd.*, 815 N.W.2d 30, 45 (Iowa 2012).

he alleges in his due process challenge.[3] He argues, "The fact that giving Seiler his 134 days of jail time credit conflicts with his life sentence provides no reasons for him to be denied an opportunity to challenge this taking of his liberty." We interpret this as a procedural due process challenge. "When a state action threatens to deprive a person of a protected liberty or property interest, a person is entitled to procedural due process." *Meyer v. Jones*, 696 N.W.2d 611, 625 (Iowa 2005). Prior to this depravation, the person must be given some kind of notice or opportunity to be heard. *Id*. We find Seiler was not deprived of his 134 days of jail time credit. The credit waits in abeyance should the Governor convert his sentence into a term of years through commutation. If that occurs as provided by section 902.1, then the jail credit will be applied to the new sentence, which would be a fixed period of time. This new term sentence would then provide the department of corrections the ability to calculate a precise release date and apply the jail credit.

As we find no conflict between section 902.1 and section 903A.5, Seiler's sentence, which properly applies both of these sections, is not illegal, inherently flawed, or void as he contends. We also find no constitutional violation in the application of the two statutes to Seiler's case.

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[3] We note that until Seiler dies in jail, it cannot be said that the 134-day credit was taken from him. Under his argument, it is not until we know the date of his death that we could know whether the 134-day credit was not given. This fact raises ripeness issues. *See State v. Tripp*, 776 N.W.2d 855, 859 (Iowa 2010) ("A case is ripe for adjudication when it presents an actual, present controversy, as opposed to one that is merely hypothetical or speculative.") However, because this claim can be resolved through statutory construction, we decide to address the merits of the claim rather than dismiss on ripeness grounds.

III. Restitution.

Seiler brought a separate challenge to his sentence regarding restitution. He filed a motion for a restitution clarification and correction hearing. The State was ordered to respond and filed statements in answer to Seiler's request for an accounting. The district court denied Seiler's request for a hearing but did order the department of corrections to update Seiler's repayment plan after the accounting provided by the State exposed an error in the entry of a payment. On appeal, Seiler asserts that the court should have granted a hearing pursuant to Iowa Code section 910.7.[4]

We review the district court's ruling on restitution orders for correction of errors at law. *State v. Klawonn*, 688 N.W.2d 271, 274 (Iowa 2004). Because section 910.7 grants the district court discretion in determining whether a hearing on restitution should be held, our review is for an abuse of discretion. *State v. Blank*, 570 N.W.2d 924, 926 (Iowa 1997).

On appeal, Seiler contends the district court erred by denying his petition for a hearing regarding the restitution he owes. He claims a hearing was warranted on the face of his petition since the accounting provided by the State did reveal an entry error for his account. "A petitioner seeking to challenge a restitution award outside of a criminal appeal, however, is not automatically entitled to a hearing, but is granted a hearing only if the district court determines,

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[4] The pertinent language of 910.7 states:

> At any time during the period of probation, parole, or incarceration, the offender or the office or individual who prepared the offender's restitution plan may petition the court on any matter related to the plan of restitution or restitution plan of payment and the court shall grant a hearing if on the face of the petition it appears that a hearing is warranted.

based on the petition, that a hearing is warranted." *State v. Jenkins*, 788 N.W.2d 640, 644 (Iowa 2010). "[T]he legislature has determined the district court should serve as a gatekeeper . . . ." *Blank*, 570 N.W.2d at 927. In this case, Seiler technically filed a motion, rather than a petition as required by Iowa Code section 910.7(1). However, considering substance over form we will treat his motion as a petition, as did the district court.

In his request for a hearing, Seiler set forth three "specific explanation of grounds and allegations of fact." He alleged that (1) the restitution plan was not properly computed by the State thus making the total amount due "inaccurate and not justified;" (2) the original amount of restitution ordered was $6,154.29 on January 22, 1985; and (3) he was in possession of two restitution summary sheets which showed two different amounts owed although he had not received any information from the court that his plan had been changed or amended. The district court then entered an order requiring the State to respond to the motion before making any decision relative to granting or denying a hearing.

The State filed a thorough response with charts and explanations for the entries in the clerk's records. Subsequently, Seiler filed a reply to the State's response with only general complaints that the clerk had committed errors in keeping the records and that the clerk's records were not correct. The State then filed a response to Seiler's reply consisting of eleven pages with more information, more charts, and responding to Seiler's generalized complaints.

As noted by the State in its response, "due to the passage of time and multiple changes in accounting, computer, and administrative systems under

several different versions of laws and administrative code, there are inherently some things that look different than we expect," but "a hearing is not going to change that." We agree that to attempt to educate Seiler on the many changes, such as the Iowa Court Information System (ICIS), via a hearing is wasteful of judicial resources. Although the decision to grant or deny a hearing must be based upon the face of the petition, the court made judicious use of its time by requiring the State to respond and thereby ascertain if disputed issues existed requiring a hearing. We conclude the district court did not abuse its discretion in denying Seiler's request for a restitution hearing under these facts.

AFFIRMED.