

IN THE COURT OF APPEALS OF IOWA

No. 8-864 / 07-1199
Filed November 26, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RICHARD LAWRENCE WARNER,
Defendant-Appellant.

Appeal from the Iowa District Court for Davis County, Daniel P. Wilson and Annette Scieszinski, Judges.

Richard Warner appeals from the district court's denial of his request to limit the presentence investigation and from the district court's sentencing order.

AFFIRMED.

Ryan J. Mitchell of Orsborn, Milani & Mitchell, L.L.P., Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, and Rick L. Lynch, County Attorney, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

DOYLE, J.

Richard Warner appeals from the district court's denial of his request to limit the Iowa Department of Correctional Services presentence investigation and from the trial court's sentencing order, which provides Warner "shall comply with any evaluations and participate in all treatments and programs recommended by his supervision officer." Warner further contends the sentencing court should have ordered the Pennsylvania Department of Corrections not to require him to complete a sexual evaluation because the crime was not sexual in nature. Upon our review, we affirm.

I. Background Facts and Proceedings.

On August 26, 2005, Warner, a Pennsylvania resident, was charged by trial information with sexual abuse in the third degree (Count I), a class "C" felony, in violation of Iowa Code section 709.4 (2005). On September 16, 2005, Warner was charged by additional trial information with practicing medicine without a license (Count II), a class "D" felony, in violation of sections 147.2 and 147.103(A)(1). According to the minutes of testimony and investigative materials, Warner performed a "female exam" upon a nineteen-year-old woman. Warner denied performing an internal examination, but did admit to performing an abdominal examination by placing his hands on the woman's abdomen and pressing on her liver, spleen, stomach, intestinal areas, and ovaries.

On December 1, 2006, Warner pled guilty to Count II, practicing medicine without a license, pursuant to a plea agreement. In exchange for his plea, the State agreed that, among other things, it would dismiss Count I and recommend that Warner receive a five-year suspended sentence with no jail time and

probation, which would be subsequently transferred to Warner's home state of Pennsylvania. The district court accepted the plea, set sentencing for hearing, and ordered the Eighth Judicial District Department of Correctional Services to complete a presentence investigation.

Warner then filed a motion for "Judicial Review of Preparation of [Presentence] Investigation." Warner asserted that, in preparing the presentence investigation, the "Department of Corrections"¹ was improperly including a sexual history report when he had not pled guilty to a sexual crime. Consequently, he requested the court "direct the Department of Corrections to not prepare a sexual history report as part of their [Presentence] Investigation"

On December 15, 2007, a hearing on Warner's motion for judicial review was held before the district court. At the hearing, the State and Warner stipulated that Counts I and II "were out of the same incident that occurred at the same time in the same place." Additionally, Sue Boggs, a probation/parole officer for the Eighth Judicial District Department of Correctional Services (Department), testified regarding the sexual history report she was asked complete in Warner's presentence investigation. Boggs explained that a sexual history report is different than a psychological evaluation, and that having a sexual history report in a presentence investigation in no way places a defendant on the sex offender registry. Boggs acknowledged that Warner had pled guilty to a charge that was not associated with any sexual act or sex-related crime, but stated that pursuant to Iowa Code section 901.3 subsections (3), (5), and (7), the

¹ Although Warner's motion refers to the department of corrections, it is understood he meant the department of correctional services, as it is the department of correctional services that completes the presentence investigation.

investigator was required to inquire into any mitigating circumstances related to the offense and the defendant's potential as a candidate for deferred judgment, deferred sentence, suspended sentence, or probation, as well as the circumstances of the offense and harm to the victim. Consequently, Boggs testified that based upon the minutes of testimony in this case, she was asked to complete a sexual history report. Boggs further noted that the sexual abuse charge was still pending in the case, but that it was scheduled to be dismissed at sentencing.

Following the hearing, the district court denied the relief requested. In so ruling, the court determined:

Here, there is sufficient nexus between Warner's admitted conduct in Practicing Medicine without a License and the surrounding circumstances of that offense—alleged to have been sexual in nature—to warrant inquiry into his sexual history. The presentence investigation, including a sexual history investigation, should continue.

On March 9, 2007, the sentencing hearing was held. The district court denied Warner's request for deferred judgment. The court then imposed a suspended sentence of incarceration not to exceed five years, a fine of \$750, and three years' probation, and the State dismissed the sexual abuse charge. Additionally, the court imposed special conditions of probation, one of which ordered that Warner "shall comply with any evaluation and participate in all treatments and programs recommended by his supervising officer." After announcing Warner's sentence and the conditions of probation, the following exchange took place:

[WARNER'S COUNSEL]: I did have a question, Your Honor. You mention that Mr. Warner complete all evaluations that

the Department of Corrections recommends. I guess I'm not clear as to does this include [participation in the Sex Offender Treatment Program]? I guess what's your order about that?

. . . .
 [COUNTY ATTORNEY]: Your Honor, I talked to [Sue Boggs], and it's my understanding that [Warner]—if this works the ways it's planned, [Warner's] probation will be transferred to the State of Pennsylvania. So the Eighth Judicial District is not asking for or planning on doing any kind of an evaluation with [Warner] for this purpose of the [Sex Offender Treatment Program].

What I think needs to be understood is, if [Warner] does get transferred to Pennsylvania . . . , he's going to have to do whatever their requirements are. And if that's the requirement to do the [Sex Offender Treatment Program], or I'm sorry, to do any kind of an evaluation to determine if [the Sex Offender Treatment Program] is necessary, then . . . [Warner's] going to have to do that or [Pennsylvania's] not going to supervise him and he's going to be shipped back to the Eighth. And we don't want to do that. So in Iowa, we're not asking for that to happen, but Pennsylvania could very well. And if they do, he's going to have to do what they're asking for or else he's going to have to come back to Iowa for his probation. . . .

[WARNER'S COUNSEL]: Your Honor, we have no problem with an evaluation to be done as long as the Court isn't sentencing him to [the Sex Offender Treatment Program].

THE COURT: I don't think there is a problem.

[WARNER'S COUNSEL]: Okay.

In entering judgment in the matter, the district court's judgment entry noted:

[T]he . . . "suggested special probation conditions" listed on page 24 of 25 of the Presentence Investigation Report filed January 31, 2007, . . . included a requirement that . . . [Warner] complete all requirements for an evaluation to determine his appropriateness for placement in a Sex Offender Treatment Program.

At this time, the court declines to impose the foregoing . . . conditions

Warner returned to his home state of Pennsylvania and was then subject to the jurisdiction of the Pennsylvania Department of Corrections. Thereafter, on April 12, 2007, Warner filed his "Motion for Reconsideration of Sentence." Warner's motion alleged that the Pennsylvania Department of Corrections placed him on their sex offender registry and restricted Warner to a four-county radius

as part of his probation. Warner maintained his “plea bargain was made in such a way to avoid . . . being placed on the [sex offender] registry.” Consequently, he requested the Iowa court order the Pennsylvania Department of Corrections to not place him on their sex offender registry. Following a hearing on the matter, the district court denied the motion, concluding:

[A]lthough this court has declined to impose special terms and conditions of probation in the sentencing order, the state of Pennsylvania is within its rights, under the provision of the [Interstate Compact for Adult Offender Supervision], to supervise Warner pursuant to its own rules, laws and regulations. An Iowa court cannot require otherwise

Warner appeals.

II. Scope and Standard of Review.

We review a sentence imposed by the district court for corrections of errors at law. Iowa R. App. P. 6.4; *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000). We will not reverse the decision of the district court absent an abuse of discretion or some defect in the sentencing procedure. *State v. Witham*, 583 N.W.2d 677, 678 (Iowa 1998). To the extent Warner claims the district court erred in denying his motion for a protective order, our review is of corrections of errors at law. Iowa R. App. P. 6.4. To the extent Warner presents any constitutional claims, our review is de novo. *State v. Godbersen*, 493 N.W.2d 852, 854 (Iowa 1992).

III. Merits.

A. Presentence Investigation.

On appeal, Warner argues there is not sufficient nexus between his admissions and the crime he pled guilty to in order to allow the department of corrections to prepare a sexual history report. We disagree.

Iowa Code section 901.2 provides, in part, that upon a plea of guilty the court shall receive from the judicial district department of correctional services any information which is relevant to the question of sentencing. Further, the court shall order a presentence investigation when the offense is, as in this case, a class “D” felony. Iowa Code § 901.2. This requirement cannot be waived for a class “D” felony. *Id.*

If a presentence investigation is ordered by the court, the investigation shall inquire into, among other things, the defendant’s characteristics, the defendant’s social history, the circumstances of the offense, and the harm to the victim. *Id.* § 901.3(1), (2), (3), (5). The primary function of the presentence investigation is to provide pertinent information to aid the district court in sentencing. *State v. Uthe*, 541 N.W.2d 532, 533 (Iowa 1995).

Although it is clear that Warner did not plead guilty to a sex act or anything sexual in nature, the sexual abuse charge was still pending at the time of the presentence investigation. Under the unique circumstances of this case, there was no error in ordering the sexual history and investigation to proceed. Certainly the sexual history falls under the circumstances of the offense, one of the proper factors to be considered in a presentence investigation report.

Warner further argues it would be impossible for the sentencing court to not have been improperly prejudiced when given the information in the presentence investigation. In its judgment entry, the district court specifically noted it declined to impose the presentence investigation's probation condition recommendation that Warner complete all requirements for an evaluation to determine his appropriateness for placement in a sex offender treatment program. Additionally, in denying Warner's request for deferred judgment, the court stated:

The main reason is that although you do not have a felony record, you do have some fairly serious misdemeanor records compiled over your many years, starting back in March of 1974. You had some substance abuse issues which you had talked about. More recently in the 90s, you had some criminal charges based upon, as you say, business practices and/or financial circumstances. But nevertheless, convictions. And also more recently an OWI in 1999 in Pennsylvania.

You need to have a really clean record for me to seriously look at a deferred.

It is apparent that the inclusion of the sexual history in the presentence investigation was not a factor considered by the district court in sentencing.

Furthermore, Warner's comparison of his case to *State v. Valin*, 724 N.W.2d 440 (Iowa 2006), is without merit. In *Valin*, Valin was convicted of OWI and then ordered to participate in sex offender counseling and submit to certain tests as a condition of his probation. *Valin*, 724 N.W.2d at 441-43. The supreme court found the sentencing court abused its discretion in imposing those special terms of probation. *Id.* at 448-49. The court concluded there was no reasonable relationship between Valin's required participation in the sex offender treatment program and the imposition of other special terms of probation, and the goals of

probation for Valin's current operating while intoxicated conviction. *Id.* Such is not the case here. The sexual history was part of the presentence investigation, not a condition of probation. As stated earlier in this opinion, there was sufficient nexus between the circumstances surrounding the offense and the presentence investigation sexual history.

Consequently, we conclude the district court did not error in denying Warner's motion for protective order. We further conclude the district court considered relevant sentencing factors and clearly stated valid reasons for the sentence it imposed. We find no abuse in its exercise of sentencing discretion and therefore affirm the sentence.

B. Placement on Pennsylvania Sex Offender Registry.

Warner next contends the district court should have ordered the Pennsylvania Department of Corrections not to require him to complete a sexual evaluation because his crime was not sexual in nature. The State responds that Warner is not entitled to relief because the Pennsylvania authorities are free to supervise Warner as they see fit. We agree.

Iowa and Pennsylvania are both participants of the Interstate Compact for Adult Offender Supervision (Compact). See Iowa Code ch. 907B; 61 Pa. Cons. Stat. § 324.1 (2007). The Compact is "a formal agreement between member states that seeks to promote public safety by systematically controlling the interstate movement of certain adult offenders." Interstate Compact for Adult Offender Supervision Rules (2008)² at 1, <http://www.interstatecompact.org>

² The 2008 Compact rules are the only rules available to this court. However, it appears that the applicable rules here have not been substantively changed since 2005.

/Portals/0/library/legal/ICAOS_Rules.pdf. In joining in the Compact, both Iowa and Pennsylvania agreed that “[a]ll lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.” Iowa Code § 907B.2, Article XIII(2)(a); 61 Pa. Cons. Stat. § 324.1, Article XIV(B).

Rule 4.101 of the Compact provides: “A receiving state shall supervise an offender transferred under the interstate compact in *a manner determined by the receiving state* and consistent with the supervision of other similar offenders sentenced in the receiving state.” Interstate Compact for Adult Offender Supervision Rules (2008) at 37, http://www.interstatecompact.org/Portals/0/library/legal/ICAOS_Rules.pdf (emphasis added). Additionally, rule 4.103(a) provides:

At the time of acceptance or during the term of supervision, the compact administrator or supervising authority in the receiving state may impose a special condition on an offender transferred under the interstate compact if that special condition would have been imposed on the offender if sentence had been imposed in the receiving state.

Id. at 39.

In this case, Warner does not dispute that he requested his probation be transferred to Pennsylvania. In accepting Warner’s supervision, it is clear under the Compact rules that it is Pennsylvania, not Iowa, that determines the manner in which Warner is to be supervised. Furthermore, Pennsylvania, in accepting Warner’s probation supervision, was free to impose special conditions upon Warner. Moreover, at Warner’s sentencing hearing, the county attorney expressly advised Warner that if Warner requested his probation supervision be

transferred to Pennsylvania, he would be subject to Pennsylvania's supervision conditions. Consequently, we conclude the district court did not err determining that Pennsylvania is within its rights, under the provision of the Compact, to supervise Warner pursuant to its own rules, laws, and regulations, and that an Iowa court cannot require otherwise. We therefore affirm the judgment and sentence of the district court.

IV. Conclusion.

Based upon the foregoing reasons, we affirm the judgment and sentence of the district court.

AFFIRMED.