

IN THE COURT OF APPEALS OF IOWA

No. 9-689 / 08-1863
Filed November 12, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ARTHUR ALAN POYNER,
Defendant-Appellant.

Appeal from the Iowa District Court for Montgomery County, Timothy O'Grady, Judge.

Defendant appeals from a district court ruling denying his request to modify a supplemental restitution order. **AFFIRMED.**

DeShawne L. Bird-Sell of DeShawne L. Bird-Sell, P.L.C., Glenwood, for appellant.

Arthur Poyner, Fort Madison, pro se.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, and Bruce E. Swanson, County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Mansfield, J., and Schechtman, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VAITHESWARAN, P.J.

This is the third appeal stemming from a criminal restitution order entered in 2002. The defendant, Arthur Poyner, challenges the jurisdiction of the court that considered the restitution issue and contends the order violates the Ex Post Facto Clauses of the United States and Iowa Constitutions.

I. Background Proceedings.

More than three decades ago, the State charged Poyner with first-degree murder. Although the act giving rise to the charge occurred in Pottawattamie County, venue was changed to Montgomery County. A jury found Poyner guilty and the court imposed a sentence, which included an order to pay the “costs of the action.” Poyner’s conviction was affirmed in *State v. Poyner*, 306 N.W.2d 716, 720 (Iowa 1981).

In 2002, the Iowa Department of Corrections sought restitution for court costs. The district court sitting in Montgomery County granted the request but, following hearings, reduced the requested amount by more than half, to \$3333.53. On appeal, this court affirmed the district court’s order. See *Poyner v. Iowa Dist. Ct.*, No. 02-1349 (Iowa Ct. App. July 10, 2003).

Poyner next filed a motion for correction of sentence, again challenging his restitution obligation. The district court denied his claims, and this court again affirmed the district court. See *State v. Poyner*, No. 06-1100 (Iowa Ct. App. Dec. 12, 2007).

Not deterred, Poyner filed another challenge to the restitution order. He asserted that the Montgomery County District Court did not have “jurisdiction or authority to issue the 2002 Supplemental Order ordering [him] to pay restitution

thus making the judgment void.” He additionally claimed the restitution order violated the constitutional prohibitions against ex post facto laws because it was entered pursuant to Iowa Code chapter 910 (2007), which was not in effect when he was sentenced in 1979. Following a hearing, the district court denied this challenge. The court concluded:

There is no ex post facto violation of defendant’s due process rights by using chapter 910 to collect court costs that were lawfully assessed. Defendant also misapprehended the meaning of the rules pertaining to change of venue. Venue was changed from Pottawattamie County to Montgomery County. Jurisdiction remained in the Iowa District Court at all times.

Poyner appealed. Our review is for errors of law. *State v. Jose*, 636 N.W.2d 38, 43 (Iowa 2001).

II. Analysis.

A. Jurisdiction.

Poyner claims that “Montgomery County, as the situs of trial as the result of a change of venue, does not hold subject matter jurisdiction in this case.” He asserts subject matter jurisdiction instead remained with the district court in Pottawattamie County where the case originated.

“Subject matter jurisdiction refers to ‘the authority of a court to hear and determine cases of the general class to which the proceedings in question belong,’” in contrast to the authority of the court to hear the particular case then occupying the court’s attention.

In re Marriage of Engler, 532 N.W.2d 747, 749 (Iowa 1995) (citations omitted).

Iowa district courts clearly have subject matter jurisdiction to hear the general class of cases involving criminal restitution. See generally Iowa Code ch. 910. Additionally, this jurisdiction is statewide. See *id.* § 602.6101 (establishing a unified trial court with exclusive, general, and original jurisdiction over all civil and

criminal proceedings, except where the legislature has otherwise provided); *In re Marriage of Rathje*, 521 N.W.2d 748, 749 (Iowa 1994) (“We read nothing in [section 602.6101] to indicate that Iowa’s district courts hold less than statewide jurisdiction over all appropriate matters.”). Therefore, there is no question that the district court sitting in Montgomery County had subject matter jurisdiction over Poyner’s restitution proceedings.

The question remains whether Montgomery County was the appropriate venue for the post-trial restitution proceedings. On this question, the State concedes that “[a]fter defendant was convicted, the case should have returned to Pottawattamie County for further proceedings.” The State argues, however, that Poyner waived this issue by failing to file a motion for change of venue when the restitution issue was first raised in Montgomery County in 2002. See Iowa R. Civ. P. 1.808(1) (providing that an action brought in the wrong county may be prosecuted there unless the defendant moves for a change of venue before answering). We agree with the State.

“[V]enue is not ordinarily jurisdictional.” *Countryman v. Mt. Pleasant Bank & Trust Co.*, 357 N.W.2d 599, 604 (Iowa 1984). Therefore, improper venue, if not challenged, may be waived. *Id.* at 603-04 (finding parties acquiesced to venue in a certain county by filing motions in that county); see also *State v. Mandicino*, 509 N.W.2d 481, 483 (Iowa 1993) (holding “an impediment to the court’s *authority* can be obviated by consent, waiver or estoppel”). As there is no indication that Poyner challenged the court’s venue in the restitution proceedings, we conclude this issue was waived.

B. Ex Post Facto Clauses.

Poyner next claims the district court “erred in failing to rule on [his] assertion that Iowa Code chapter 910 was unconstitutionally imposed” under the Ex Post Facto Clauses of the United States and Iowa Constitutions.¹ See U.S. Const. art. I, § 10, cl. 1; Iowa Const. art. 1, § 21. As noted, the court in fact ruled on the claim, concluding, “There is no ex post facto violation of defendant’s due process rights by using chapter 910 to collect court costs that were lawfully assessed.” As Poyner does not challenge the merits of that ruling, we need go no further. See *Hylar v. Garner*, 548 N.W.2d 864, 870 (Iowa 1996) (“[O]ur review is confined to those propositions relied upon by the appellant for reversal on appeal.”).

III. Conclusion.

We affirm the district court’s denial of Poyner’s latest challenge to the restitution order.

AFFIRMED.

¹ Although Poyner’s brief does not specify the constitutional provisions on which he relies, the section 910.7 motion he filed in district court referred to the Ex Post Facto Clauses of both the federal and state constitutions.