

SUPREME COURT OF IOWA

State of Iowa v. Sean David Gordon

921 N.W.2d 19 (Iowa 2018) · No. No. 17-0395 · Decided December 14, 2018

SUMMARY

The Iowa Supreme Court vacated the court of appeals decision and affirmed Sean Gordon’s prison sentence for third-degree sexual abuse. The court held that Gordon failed to preserve his due process challenge to the sentencing court’s consideration of sex-offender risk assessment tools, and that the record was insufficient to decide the related ineffective-assistance claim on direct appeal. The court also held that the district court did not improperly rely on an unproven or unprosecuted offense because Gordon admitted facts concerning his methamphetamine possession and presence with a missing juvenile.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                            |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Iowa                                                                                                                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Wiggins, Justice; Appel, Justice; All other justices                                                                                                                                                                                                                                                                                       |
| JURISDICTION          | Iowa                                                                                                                                                                                                                                                                                                                                       |
| DECIDED               | December 14, 2018                                                                                                                                                                                                                                                                                                                          |
| DOCKET                | No. 17-0395                                                                                                                                                                                                                                                                                                                                |
| DISPOSITION           | vacated                                                                                                                                                                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | The State sought further review of a Iowa Court of Appeals decision reversing Gordon's sentence. The Supreme Court of Iowa granted further review and considered Gordon's due process, ineffective-assistance, and sentencing-factor claims.                                                                                               |
| STANDARD OF REVIEW    | Sentencing decisions within statutory limits are reviewed for abuse of discretion. An abuse of discretion exists when the district court acts on clearly untenable or unreasonable grounds. Preservation of error is required for claims concerning errors in sentencing proceedings when further evidence is needed to resolve the claim. |
| PRECEDENTIAL VALUE    | Published, precedential opinion of the Supreme Court of Iowa                                                                                                                                                                                                                                                                               |
| PARTIES               | Sean David Gordon v. State of Iowa                                                                                                                                                                                                                                                                                                         |

TOPICS

sentencing

due process

preservation of error

ineffective assistance

post-conviction relief

## PRACTICE AREAS

criminal law

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## QUESTIONS PRESENTED

1. Whether Gordon preserved his due process challenge to the district court's consideration and reliance on sex-offender risk-assessment tools at sentencing.
2. Whether the record was sufficient to decide on direct appeal Gordon's ineffective-assistance claim based on counsel's failure to object to the risk-assessment tools.
3. Whether the district court abused its discretion by relying at sentencing on an unproven or unprosecuted methamphetamine-possession offense and related circumstances.

## HOLDINGS

1. Gordon failed to preserve his due process claim because the alleged error concerned the sentencing proceedings rather than an intrinsically unconstitutional sentence, and he had access to the PSI and risk assessments but did not object to their use before sentencing.
2. The record was insufficient to decide Gordon's ineffective-assistance claim on direct appeal because determining whether use of the risk-assessment tools violated due process required additional evidence.
3. The district court did not abuse its discretion by considering Gordon's methamphetamine-possession arrest and the surrounding circumstances because Gordon admitted facts establishing possession, admitted he was with the juvenile when arrested, and did not object to the PSI information.

## KEY QUOTATIONS

*“How are we to determine the due process implications of the district court’s use of risk assessment tools, when we do not know anything about the tools and Gordon failed to object to their use?”* (921 N.W.2d at 25)

*“After all, “Our law punishes people for what they do, not who they are.””* (921 N.W.2d at 26)

*“DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.”* (921 N.W.2d at 28)

## FACTUAL BACKGROUND

Gordon, age twenty-four, met fourteen-year-old A.G. through a family gathering and exchanged messages and nude photographs with her. In June 2016, he drove A.G. into the countryside and engaged in a vaginal sex act with her. After pleading guilty to third-degree sexual abuse, Gordon underwent a psychosexual evaluation that included the STATIC-99R and SOTIPS risk-assessment tools. The presentence investigation report also described his subsequent arrest for methamphetamine possession while he was with a missing juvenile female; Gordon did not object to the risk assessments or the relevant PSI information before sentencing.

## PROCEDURAL HISTORY

Gordon pleaded guilty to third-degree sexual abuse in the Iowa District Court for Floyd County and was sentenced to a prison term not exceeding ten years. On direct appeal, the Iowa Court of Appeals reversed and remanded for resentencing based on its conclusion that there was no statutory authority to use sex-offender risk-assessment tools in sentencing. The Supreme Court of Iowa granted the State's request for further review, vacated the court of appeals decision, and affirmed the district court judgment.

## DISPOSITION

vacated

## CASES CITED

- State v. Ayers, 590 N.W.2d 25, 27 (Iowa 1999)
- State v. Cooley, 587 N.W.2d 752, 754 (Iowa 1998)
- State v. Young, 292 N.W.2d 432, 435 (Iowa 1980)
- State v. Thomas, 520 N.W.2d 311, 312-13 (Iowa Ct. App. 1994)
- State v. Lathrop, 781 N.W.2d 288, 293 (Iowa 2010)
- State v. Bruegger, 773 N.W.2d 862, 871-72 (Iowa 2009)
- State v. Grandberry, 619 N.W.2d 399, 402 (Iowa 2000)
- State v. Brubaker, 805 N.W.2d 164, 170 (Iowa 2011)
- State v. Seats, 865 N.W.2d 545, 552 (Iowa 2015)
- State v. Thompson, 856 N.W.2d 915, 918 (Iowa 2014)
- Graber v. City of Ankeny, 616 N.W.2d 633, 638 (Iowa 2000)
- State v. Valin, 724 N.W.2d 440, 445 (Iowa 2006)
- State v. Witham, 583 N.W.2d 677, 678 (Iowa 1998)
- State v. Gonzalez, 582 N.W.2d 515, 517 (Iowa 1998)
- State v. Longo, 608 N.W.2d 471, 474 (Iowa 2000)
- State v. Guise, \_\_\_ N.W.2d \_\_\_, \_\_\_ (2018)
- Townsend v. Burke, 334 U.S. 736, 741, 68 S. Ct. 1252, 1255 (1948)
- Buck v. Davis, 580 U.S. \_\_\_, \_\_\_, 137 S. Ct. 759, 778 (2017)
- Christopher Slobogin, Principles of Risk Assessment: Sentencing and Policing, 15 Ohio St. J. Crim. L. 583, 596 (2018)

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