

SUPREME COURT OF IOWA

State v. Tripp

776 N.W.2d 855 (Iowa 2010) · No. No. 08-0805 · Decided January 8, 2010

SUMMARY

The Iowa Supreme Court reviewed Schuyler Cole Tripp’s constitutional challenge to the lifetime parole special sentence imposed under Iowa Code section 903B.1 following his guilty plea to third-degree sexual abuse. The court held that the challenge was not ripe because Tripp had not served prison time, was on probation rather than parole, and the future terms and duration of parole were uncertain. The court affirmed the sentence.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Baker, Justice
JURISDICTION	Iowa
DECIDED	January 8, 2010
DOCKET	No. 08-0805
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a guilty plea and sentence for third-degree sexual abuse, specifically challenging the constitutionality of the lifetime special sentence imposed under Iowa Code section 903B.1.
STANDARD OF REVIEW	Constitutional challenges to statutes are reviewed de novo. Statutes are presumed constitutional, and the challenger bears the burden of proving unconstitutionality beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published Iowa Supreme Court opinion; precedential
PARTIES	Schuyler Cole Tripp v. State of Iowa

TOPICS

- cruel and unusual punishment
- sentencing
- ripeness
- appellate procedure
- standard of review

PRACTICE AREAS

- criminal law
- constitutional law
- sentencing
- appellate procedure

QUESTIONS PRESENTED

1. Whether Tripp's constitutional challenge to the lifetime parole special sentence under Iowa Code section 903B.1, as applied to third-degree sexual abuse, was ripe for adjudication.
2. Whether the special sentence constituted cruel and unusual punishment under the Eighth Amendment to the United States Constitution and article I, section 17 of the Iowa Constitution.
3. Whether trial counsel's failure to raise the constitutional challenge denied Tripp effective assistance of counsel.

HOLDINGS

1. Tripp's challenge to the constitutionality of the Iowa Code section 903B.1 special sentence was not ripe for adjudication because he was on probation, not parole, and the duration and conditions of any future parole supervision and any consequences for violating those conditions had not yet been determined.
2. Because the claimed constitutional defect concerned an allegedly inherently illegal sentence, the court could address the challenge directly rather than requiring it to be presented under an ineffective-assistance-of-counsel framework.

KEY QUOTATIONS

“We hold this challenge to the special sentence provisions under Iowa Code section 903B.1, as applied to third-degree sexual assault under Iowa Code section 709.4(2)(c)(4), is not ripe for adjudication.” (857)

“A case is ripe for adjudication when it presents an actual, present controversy, as opposed to one that is merely hypothetical or speculative.” (859)

“Because of the foregoing, we do not believe this case is ripe for review.” (859)

FACTUAL BACKGROUND

Tripp, age twenty, pleaded guilty to performing a sex act with a fifteen-year-old victim when the parties were more than four years apart in age and were not cohabiting as husband and wife. He received a suspended sentence, five years of supervised probation, a fine, sex-offender registration, and a special sentence under Iowa Code section 903B.1 committing him to lifetime custody with eligibility for parole-like supervision. At the time of appeal, he had served no prison time and was on probation rather than parole.

PROCEDURAL HISTORY

Tripp pleaded guilty to third-degree sexual abuse under Iowa Code section 709.4(2)(c)(4). The district court imposed an indeterminate prison term not exceeding ten years, suspended incarceration in favor of five years of supervised probation, imposed a fine and sex-offender registration, and imposed the section 903B.1 special sentence of lifetime custody with parole-like supervision. Tripp did not file a motion in arrest of judgment and appealed directly; the Supreme Court of Iowa affirmed, holding the constitutional challenge was not ripe.

DISPOSITION

affirmed

CASES CITED

- State v. Keene, 629 N.W.2d 360, 363 (Iowa 2001)
- State v. Seering, 701 N.W.2d 655, 661 (Iowa 2005)
- State v. Hernandez-Lopez, 639 N.W.2d 226, 233 (Iowa 2002)
- State v. Bruegger, 773 N.W.2d 862, 869 (Iowa 2009)
- State v. Wade, 757 N.W.2d 618, 626-27 (Iowa 2008)
- United States v. Bridges, 760 F.2d 151, 154 (7th Cir. 1985)
- United States v. Walden, 578 F.2d 966, 972 (3d Cir. 1978)
- United States v. Rea, 532 F.2d 147, 149 (9th Cir. 1976)
- State v. Iowa Dist. Ct., 616 N.W.2d 575, 578 (Iowa 2000)
- Abbott Labs. v. Gardner, 387 U.S. 136, 148-49 (1967)
- Califano v. Sanders, 430 U.S. 99, 105 (1977)
- State v. Schreiner, 276 Neb. 393, 754 N.W.2d 742, 765 (2008)
- State v. Bullock, 638 N.W.2d 728, 735 (Iowa 2002)

OPINION

BAKER, J.

776 N.W.2d 855 (2010) STATE of Iowa, Appellee, v. Schuyler Cole TRIPP, Appellant. No. 08-0805. Supreme Court of Iowa. January 8, 2010. *856 Victoria R. Siegel, Ottumwa, for appellant. Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, Richard Scott, County Attorney, and Allan Cook and Lisa Holl, Assistant County Attorneys, for appellee.

BAKER, Justice. The defendant, Schuyler Cole Tripp, appeals following his guilty plea to sexual abuse in the third degree in violation of Iowa Code section 709.4(2)(c)(4) (2007). He appeals specifically from that portion *857 of his sentence imposed pursuant to Iowa Code section 903B.1, committing him to the Director of the Iowa Department of Corrections for a term of life, with supervision as if on parole.

Defendant alleges that, as applied to third-degree sexual assault under Iowa law, this special sentence constitutes cruel and unusual punishment in violation of the prohibitions contained in the United States and Iowa Constitutions, and because his trial counsel failed to raise this constitutional claim in the trial proceedings, he was denied effective assistance of counsel.

We hold this challenge to the special sentence provisions under Iowa Code section 903B.1, as applied to third-degree sexual assault under Iowa Code section 709.4(2)(c)(4), is not ripe for adjudication. I. Background Facts and Proceedings.

On July 19, 2007, Tripp was charged by trial information with sexual abuse in the third degree in violation of Iowa Code section 709.4(2)(c)(4), for performing a sex act with a person fifteen years of age. At the time, Tripp was twenty years old, there was more than a four-year age difference between himself and the victim, and they were not cohabiting as husband and wife.

Tripp pled guilty and was sentenced to an indeterminate term of incarceration not to exceed ten years. Tripp's incarceration was suspended, and he was placed on supervised probation for a period of five years. Tripp was required to pay a fine and had to register on the Iowa sex offender registry. Additionally, because Tripp was convicted of a sexual offense, the court imposed the special sentence under Iowa Code section 903B.1 providing for the imposition of lifetime parole.

Tripp did not file a motion in arrest of judgment. Tripp filed a notice of appeal. II. Scope of Review. The court reviews challenges to the constitutionality of a statute *de novo*. *State v. Keene*, 629 N.W.2d 360, 363 (Iowa 2001). "[S]tatutes are cloaked with a presumption of constitutionality.

The challenger bears a heavy burden, because it must prove the unconstitutionality beyond a reasonable doubt." *State v. Seering*, 701 N.W.2d 655, 661 (Iowa 2005) (quoting *State v. Hernandez-Lopez*, 639 N.W.2d 226, 233 (Iowa 2002)). III. Error Preservation.

Because Tripp alleges that the sentence is inherently illegal, we may address it directly and not under the guise of ineffective assistance of counsel. *State v. Bruegger*, 773 N.W.2d 862, 869 (Iowa 2009). IV. Discussion and Analysis. Tripp pled guilty to third-degree sexual abuse. A person is guilty of sexual abuse in the third degree when the person performs a sex act with another individual under fourteen or fifteen years of age, the person is four or more years older than the other individual, and the individuals are not cohabitating as husband and wife at the time of the act.

See Iowa Code § 709.4(2)(c)(4). Third-degree sexual abuse is a class "C" felony and is punishable by up to ten years in prison. Iowa Code §§ 709.4, 902.9. For committing sexual abuse in the third degree, Tripp was sentenced to five years of supervised probation. He was also required to pay a fine and register as a sex offender in the state of Iowa.

Finally, the *858 court imposed the special sentence under Iowa Code section 903B.1. This special sentence provides: A person convicted of a class "C" felony or greater offense under chapter 709... shall also be sentenced, in addition to any other punishment provided by law, to a special sentence committing the person into the custody of the director of the Iowa department of corrections for the rest of the person's life, with eligibility for parole as provided in chapter 906.

The special sentence imposed under this section shall commence upon completion of the sentence imposed under any applicable criminal sentencing provisions for the underlying criminal offense and the person shall begin the sentence under supervision as if on parole....

The revocation of release shall not be for a period greater than two years upon any first revocation, and five years upon any second or subsequent revocation. Id. § 903B.1. Tripp alleges that the imposition of a lifetime parole sentence for the crime of third-degree sexual abuse constitutes cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution, and article I, section 17 of the Iowa Constitution.

As a preliminary matter, we must determine if this issue is ripe for our determination. *State v. Wade*, 757 N.W.2d 618, 626-27 (Iowa 2008). Tripp has not served any time in prison. His sentence was suspended, and he is currently on probation.

Under Iowa Code section 903B.1, the statute commits an offender into the custody of the department of corrections where "the person shall begin the sentence under supervision as if on parole." The type of punishment imposed is parole. Parole is a lenient form of punishment that monitors a person's activities to ensure the person is complying with the law. See Iowa Code § 906.4.

The imposition of lifetime parole is not tantamount to a sentence of life imprisonment. See *United States v. Bridges*, 760 F.2d 151, 154 (7th Cir.1985); *United States v. Walden*, 578 F.2d 966, 972 (3d Cir.1978). Tripp is not currently on parole, but rather is on probation.

We do not know the terms of his parole and the extent to which those terms may be onerous. Although standard parole terms exist, any or even all of those terms may be deleted. Iowa Admin. Code r. 201-45.2. Further, the extent of any additional punishment for a violation of the conditions of parole, if any, is speculative and will only be realized if Tripp violates the terms of his parole (a state of facts which has not occurred).

Walden, 578 F.2d at 972; see also *United States v. Rea*, 532 F.2d 147, 149 (9th Cir. 1976). It is also significant that the special sentence is not necessarily for life. Section 903B.1 provides for the possibility of release from parole under chapter 906 if the parole board determines that the offender is "able and willing to fulfill the obligations of a law-abiding citizen without further supervision."

Iowa Code § 906.15 ("If a person has been sentenced to a special sentence under section 903B.1 or 903B.2, the person may be discharged early from the sentence in the same manner as any other person on parole."). To analyze the sentence at this time we must assume Tripp will serve lifetime parole, when in reality Tripp may be released from parole at any time.

We would also be analyzing the sentence without *859 the benefit of any conditions that may be placed on him in the future. Both issues involve administrative decisions that have yet to be made. Because of the foregoing, we do not believe this case is ripe for review. A case is ripe for adjudication when it presents an actual, present controversy, as opposed to one that is merely hypothetical or speculative.

Wade, 757 N.W.2d at 626-27. The ripeness doctrine is intended "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties."

State v. Iowa Dist. Ct., 616 N.W.2d 575, 578 (Iowa 2000) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49, 87 S. Ct. 1507, 1515, 18 L. Ed. 2d 681, 691 (1967), overruled on other grounds by *Califano v. Sanders*, 430 U.S. 99, 105, 97 S. Ct. 980, 984, 51 L. Ed. 2d 192, 199 (1977)).

In a similar case, the Nebraska Supreme Court held that "any claim [the defendant] may have concerning the constitutional implications of [lifetime community supervision] should be raised if and when he becomes subject to its provisions, but not on a direct appeal from his underlying sexual assault conviction." *State v. Schreiner*, 276 Neb. 393, 754 N.W.2d 742, 765 (2008).

Thus, until the length of his parole and the extent of his supervision are determined, Tripp's challenge is not ripe. *State v. Bullock*, 638 N.W.2d 728, 735 (Iowa 2002). V. Disposition. We hold that, on this record, the issue of whether the imposition of a lifetime parole sentence to the crime of third-degree sexual abuse constitutes cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution and article I, section 17 of the Iowa Constitution is not ripe for adjudication.

AFFIRMED. All justices concur except STREIT, J., who takes no part.