

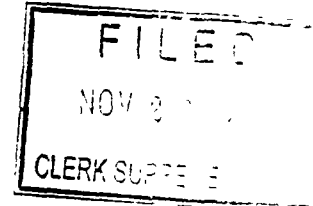
IN THE COURT OF APPEALS OF IOWA

No. 9-559 / 98-730
Filed November 23, 1999

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DENNIS LEE SANTEE a/k/a
DENNIS LEE DOERFLINGER,
Defendant-Appellant.



Appeal from the Iowa District Court for Linn County, Kristin Hibbs, Judge.

Defendant appeals from the sentence entered following his guilty plea to third-degree burglary as an habitual offender. **AFFIRMED.**

John A. Stitely, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, and Denver D. Dillard, County Attorney, for appellee.

Considered by Streit, P.J., and Vogel and Vaitheswaran, JJ.

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STREIF, P.J.

The threat habitual offenders pose to society is not rooted in the specifics of any one of their crimes, but in their repeated inability to follow rather universal laws of conduct. Dennis Santee was sentenced to fifteen years as an habitual offender when he broke into a local business, stealing property totaling seventy dollars. Santee now appeals, claiming his fifteen-year sentence violates the constitutional prohibition against cruel and unusual punishment. Because such penalogical decisions are vested in the sound judgment of the legislature, we affirm the sentence.

I. Background Facts & Proceedings.

Defendant, Dennis Santee, was charged with third-degree burglary and as an habitual offender, in violation of Iowa Code sections 713.1, 713.6A, 902.8 (1997).¹ Santee was apprehended inside a closed realty business with property from the business totaling seventy dollars. Santee pled guilty to the charge as part of a plea agreement in which the State agreed to recommend he serve the fifteen-year sentence concurrently with a similar sentence to be imposed in another third-degree burglary conviction. Santee was sentenced according to the terms of the plea agreement, receiving two concurrent fifteen-year sentences.

Santee appeals, claiming his fifteen-year sentence violates the constitutional prohibition against cruel and unusual punishment.

¹ Iowa Code section 902.8 (1997) provides: "An habitual offender is any person convicted of a class "C" or a class "D" felony, who has twice before been convicted of any felony" Iowa Code section 902.9(2) (1997) provides: "An habitual offender shall be confined for no more than fifteen years."

II. Standard of Review.

Because Santee raises a constitutional challenge to Iowa Code sections 902.8 and 902.9, our review is de novo. *State v. Meyer*, 543 N.W.2d 876, 877 (Iowa 1996).

III. Iowa's Habitual Offender Statute Is Not Cruel or Unusual.

Santee claims his sentence as an habitual offender constitutes cruel and unusual punishment as his allegedly insignificant property crime does not necessitate such an extended prison sentence.

The United States Supreme Court, in *Rummel v. Estelle*, has addressed the same constitutional challenge to Texas's habitual offender statute. *Rummel v. Estelle*, 445 U.S. 263, 100 S. Ct. 1133, 63 L. Ed. 2d 382 (1980). In *Rummel*, defendant was convicted of obtaining \$120.75 by false pretenses. *Id.* at 266, 100 S. Ct. at 1135, 63 L. Ed. 2d at 386. Because this was Rummel's third felony theft conviction, he was sentenced to life imprisonment under the Texas habitual offender statute. *Id.* Rummel challenged the sentence claiming "life imprisonment was grossly disproportionate to the three felonies that formed the predicate for his sentence." *Id.* at 265, 100 S. Ct. at 1134, 63 L. Ed. 2d at 385. The Court in upholding the statute, ruled

"the point at which a recidivist will be deemed to have demonstrated the necessary propensities and the amount of time that the recidivist will be isolated are matters largely within the discretion of the punishing jurisdiction."

Id. at 285, 100 S. Ct. at 1145, 63 L. Ed. 2d at 397. The Court further found the absence of violence does not diminish society's interest in deterring and punishing particular criminal conduct. *Id.* at 275, 100 S. Ct. at 1140, 63 L. Ed. 2d at 391.

Because the Texas habitual offender statute bares sufficient likeness to Iowa Code sections 902.8 and 902.9², *Rummel* is dispositive. The designation of an habitual offender and the term of imprisonment for such an offender "is purely a matter of legislative prerogative." *Id.* at 274, 100 S. Ct. at 1139, 63 L. Ed. 2d at 391. Santee's sentence was neither cruel nor unusual. The sentence is affirmed.

AFFIRMED.

² The Texas recidivist statute provided "[w]hoever shall have been three times convicted of a felony less than capital shall on such third conviction be imprisoned for life in the penitentiary." *Id.* at 264, 100 S.Ct. at 1134, 63 L. Ed. 2d at 385 (quoting Texas Penal Code Ann. § 12.42(d) (1974)).