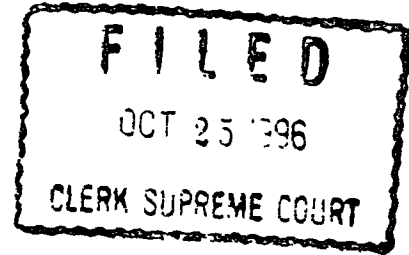


IN THE COURT OF APPEALS OF IOWA

No. 6-487 / 96-153



DANIEL E. CURNYN,

Appellant,

vs.

CITY OF COUNCIL BLUFFS,

Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Charles L.
Smith III, Judge.

Daniel Curnyn appeals from the dismissal of his application for postconviction
relief. **AFFIRMED.**

Daniel Curnyn, Council Bluffs, pro se, appellant.

Darrin T. Hamilton, Assistant City Attorney, Council Bluffs, for appellee.

Heard by Habhab, P.J., Cady, and Vogel, JJ.

CADY, J.

Daniel Curnyn was found guilty of two counts of assault in violation of an ordinance of the City of Council Bluffs. He was charged after he released his dogs from their kennel when two police officers entered his property. He was fined on one count and sentenced to thirty days in jail on the second count. The district court affirmed the convictions on appeal. The convictions were subsequently affirmed by this court on discretionary review.

After exhausting his appeals, Curnyn filed an application for postconviction relief alleging seven separate grounds for relief. The city filed a motion to dismiss the application. The district court dismissed the application concluding postconviction relief was not available as a matter of law to persons convicted of violating municipal ordinances.

Curnyn appeals. He claims excluding persons who have been sentenced to incarceration for violation of a city ordinance from utilizing postconviction relief constitutes a denial of due process and equal protection under the state and federal constitutions.

We normally review postconviction proceedings on error. *Thompson v. State*, 533 N.W.2d 215, 216 (Iowa 1995). When constitutional rights are alleged, however, we review de novo. *Id.*

Our postconviction relief statute has been interpreted to exclude persons convicted of violating a municipal ordinance. *Wright v. City of Cedar Falls*, 424

N.W.2d 456, 458-59 (Iowa 1988). Instead, persons who have been incarcerated for violating a city ordinance must challenge their conviction by seeking habeas corpus relief. *Id.* at 459. Curnyn argues the disparate treatment between persons convicted of a state statute and those convicted of a local ordinance violates the due process and equal protection provisions of the state and federal constitutions.

It is generally recognized that a constitutional challenge must specify not only the constitutional provisions invoked but state with precision the details of the claimed defect. *Iron Workers Local No. 67 v. Hart*, 191 N.W.2d 758, 771 (Iowa 1971). A person asserting a violation of equal protection has the burden of showing the classification clearly, palpably, and without doubt violates the constitution. *McMahon v. Iowa Dep't of Transp.*, 522 N.W.2d 51, 56 (Iowa 1994). A person asserting a violation of due process carries the burden of proof and must negate every reasonable basis upon which the statute may be sustained. *See Des Moines Metro Area Solid Waste Agency v. City of Grimes*, 495 N.W.2d 746, 748 (Iowa 1993).

We find Curnyn has failed to meet his burden of proof. His constitutional claims are not fully defined and he has failed to even minimally address or analyze the legal tests to determine the validity of a challenge based on due process or equal protection. *See Glowacki v. State Bd. of Med. Exam'rs*, 501 N.W.2d 539, 541 (Iowa 1993)(due process or equal protection challenge is generally analyzed by the rational basis test). Moreover, we can find no constitutional violation based on our review of the record. *See Hunter v. State of Oregon*, 761 P.2d 502, 504 (Or. 1988)

the record. *See Hunter v. State of Oregon*, 761 P.2d 502, 504 (Or. 1988) (postconviction relief statute which excludes persons convicted of violating a municipal ordinance is not unconstitutional).

AFFIRMED.