IN THE COURT OF APPEALS OF IOWA

No. 1-20 / 00-408
Filed February 28, 2001

FILED
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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TIMOTHY O'CONNOR,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge.

Timothy O'Connor appeals from the sentence imposed following his guilty plea to second-degree murder. **AFFIRMED.**

Kyle D. Williamson, Davenport, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, William E. Davis, County Attorney, and Jerald Feuerbach, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

HUITINK, P.J.

Defendant appeals from the sentence imposed following his guilty plea to murder in the second degree. He claims Iowa Code sections 902.12 and 903A.2, which provide he must serve eight-five percent of his sentence, violate the due process, equal protection, and cruel and unusual punishment provisions of the federal and State constitutions. He also claims he received ineffective assistance of counsel. We affirm on appeal.

Timothy O'Connor was charged with murder in the first degree, willful injury, kidnapping, conspiracy to commit willful injury, and conspiracy to commit murder. He entered into a plea agreement whereby he agreed to plead guilty to murder in the second degree, in violation of section 707.3, and the State would dismiss the other counts against him.

During the sentencing hearing, defense counsel stated:

> I would at this time object to what is a minimum sentence that is imposed on murder second degree pursuant to Section 902.12. There may be some semantics in parole limitations and that sort of thing, but what it all boils down to is a mandatory minimum sentence and the scheme that is set up by the legislature and the way it classifies certain felonies for what we call the 85 percent rule under 902.12 does violate state and federal constitutional due process rights of equal protection. For that reason, we would ask the Court to rule the limitations of 902.12 and the mandatory sentence of 902.12 should not apply in this case.

The district court overruled defendant's motion. O'Connor was sentenced to a term of imprisonment not to exceed fifty years. He appeals.

Because defendant raises a constitutional challenge, our review is de novo. *State v. Finnel,* 515 N.W.2d 41, 43 (Iowa 1994). On appeal of

constitutional issues, we make an independent evaluation of the totality of the circumstances. *State v. Gregg,* 464 N.W.2d 431, 432 (Iowa 1990).

O'Connor contends sections 902.12 and 903A.2 are unconstitutional for violating the due process, equal protection, and cruel and unusual punishment clauses of the federal and State constitutions. Section 902.12 provides persons convicted of certain felonies should "serve one hundred percent of the maximum term of the person's sentence and shall not be released on parole or work release." One of the listed felonies is murder in the second degree. Iowa Code § 902.12(1). An exception is provided in section 903A.2, which allows inmates a reduction in sentence, of up to fifteen percent, for good conduct time. Sections 902.12 and 903A.2 together constitute the "eighty-five percent rule."

The Iowa Supreme Court recently addressed these same issues regarding the "eighty-five percent rule" in *State v. Cronkhite,* 613 N.W.2d 664 (Iowa 2000). The court held, "Iowa Code sections 902.12 and 903A.2 do not violate defendant's right to due process or equal protection of the law. Nor does the sentence imposed constitute a cruel or unusual punishment." *Cronkhite,* 613 N.W.2d at 670. Under the ruling in *Cronkhite,* O'Connor's claims in the present case must fail.

O'Connor asserts he received ineffective assistance due to trial counsel's failure to fully explain his constitutional objections to his sentence. In view of the Iowa Supreme Court's recent ruling that sections 902.12 and 903A.2 passed constitutional muster, O'Connor has failed to show he received ineffective

assistance due to trial counsel's failure to more fully expound upon his constitutional objections to these sections.

We affirm defendant's conviction and sentence.

AFFIRMED.