FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed September 27, 1983
vs.	)	
HARLAN HALL WILLET, JR.,	)	3-209 / 68236
Defendant-Appellant.	)	

Appeal from Muscatine District Court - J. L. Burns, Judge.

Defendant appeals from his conviction for the crime of sexual abuse in the third degree in violation of Iowa Code section 709.4(5) (1979). AFFIRMED.

Charles L. Harrington, Chief Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Joseph P. Weeg, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Schlegel, Hayden and Sackett, JJ.

PER CURIAM

The defendant, Harlan Willet, Jr., appeals from his conviction for the crime of sexual abuse in the third degree in violation of Iowa Code section 709.4(5) (1979). The defendant contends that the statute infringes his constitutionally protected right of privacy and creates an arbitrary and irrational classification based on age. We affirm.

Defendant was charged by an amended information with sexual abuse in the third degree following reversal after the original trial for reasons not relevant to this appeal. Sexual abuse in the third degree in violation of Iowa Code section 709.4(5) (1979) penalizes a sex act if the person committing the act "is six or more years older than the other participant, and that other participant is fourteen or fifteen years of age." The facts, insofar as they are relevant to this appeal, were amply set out in the prior case of State v. Willet, 305 N.W.2d 454 (Iowa 1981).

Generally, our review of criminal proceedings is at law for correction of errors. Iowa R. App. P. 4. However, on issues concerning violation of constitutional safeguards, our review is **de novo**. State v. Lamp, 322 N.W.2d 48, 50 (Iowa 1982).

The defendant contends that Iowa Code section 709.4(5) (1979) infringes a constitutionally protected right to privacy concerning consensual sexual conduct. The defendant relies upon the supreme court's decision in State v. Pilcher, 242 N.W.2d 348 (Iowa 1976), for the proposition that the State may not proscribe private sexual conduct between consenting adults. Assuming, without deciding, that the rationale of that case extends to homosexual conduct, it does not prevent the State from proscribing sexual conduct involving a minor. See State v. Pilcher, 242 N.W.2d at 359.

The defendant's constitutional right of privacy restricts the right of the State to unnecessarily interfere in personal decisions relating to marriage, procreation, contraception, family relationships, and child rearing and education.

State v. Coil, 264 N.W.2d 293, 294 (Iowa 1978). The State must demonstrate an interest which is "compelling and necessary" to accomplishing a permissible state policy before it may interfere in recognized areas of fundamental rights, among which has been placed sexual relations between consenting adults of the opposite sex. Id. at 294. Where a child is involved, however, the State must demonstrate only a "significant interest." Id. at 296. It has been held that a criminal defendant's right of privacy as an adult cannot be enlarged to include sexual conduct with a minor female in violations of statutes fixing the age at which she may consent thereto. Id. at 296.

Defendant's principal contention is that the legislature in Iowa Code section 702.5 (1979) has declared that for the purposes of regulating sexual activity, a child age fourteen and above is an adult. That section provides "[f] or purposes of Titles XXXV to XXXVII, unless another age is specified, a 'child' is any person under the age of fourteen years." This contention is without merit. The purpose of that section was to satisfy the due process specificity requirement in Titles XXXV to XXXVII rather than provide an exclusive determination of the age a child may consent to sexual activity as an adult. See State v. Whetstine, 315 N.W.2d 758, 763 (Iowa 1982). Defendant's right of privacy cannot be enlarged to include sexual conduct with the 15-year-old victim in this case. The State's "significant interest" in the sexual activity on the part of its young people allows any intrusion which Iowa Code section 709.4(5) (1979) makes upon the defendant's right of privacy.

The defendant also contends that Iowa Code section 709.4(5) (1979), is a denial of equal protection because it treats participants in sex acts differently on the sole basis of whether they are, or are not, within six years older than their 14-year-old or 15-year-old sex partners. This is not a case involving a suspect classification and our review, therefore, is on the traditional rational basis test rather than the more stringent "close scrutiny" examination. State v. Cobb, 311

N.W.2d 64, 67 (Iowa 1981). The party challenging a statute has a heavy burden under the traditional standard. Id. at 67. Defendant has not carried that burden.

Age has traditionally been a factor in defining crimes. State v. Cobb, 311 N.W.2d at 67; State v. Drake, 219 N.W.2d 492, 496 (Iowa 1974). As we recognized above, the State has a "significant interest" in regulating the sexual activities of its young people. State v. Coil, 264 N.W.2d at 296. The legislature could rationally decide that persons beyond a certain age should have sufficient maturity and judgment to be held responsible for conduct which might be excusable in a younger person. State v. Drake, 219 N.W.2d at 496. We hold that Iowa Code section 709.4(5) (1979) does not violate the equal protection clause of the 14th Amendment or Article I, Section 6 of the Iowa Constitution.

AFFIRMED.