IN THE COURT OF APPEALS OF IOWA

No. 1-274 / 00-1079
May 23, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MATTHEW KRAIG NITCH,
Defendant-Appellant.

FILED
MAY 23 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Boone County, Steven J. Oeth, District Associate Judge.

Defendant appeals from the sentence imposed following his guilty plea to assault with intent to inflict serious injury, in violation of Iowa Code sections 708.1(1) and 708.2(1) (1999). **AFFIRMED.**

Stephen A. Owen of the Moothart & Owen Law Firm, Ames, for appellant.

Thomas J. Miller, Attorney General, Kristin Mueller, Assistant Attorney General, Jim Robbins, County Attorney, and David A. Brown, Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

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MAHAN, P.J.

Defendant appeals from the sentence imposed following his guilty plea to assault with intent to inflict serious injury, in violation of Iowa Code sections 708.1(1) and 708.2(1) (1999). He contends his probation officer erroneously ordered him to register as a sex offender as a condition of probation. We affirm.

The State filed a trial information charging Nitch with assault with intent to commit sexual abuse, in violation of Iowa Code section 709.11 (1999). Pursuant to a plea agreement with the State, Nitch filed a written guilty plea to an amended charge of assault with intent to inflict serious injury in violation of Iowa Code sections 708.1(1) and 708.2(1). The written plea agreement stated, "It is the intent of both the attorney for the State and the attorney for the defendant that this offense does not in any way require the defendant to register as a sex offender as there is no factual basis for such a requirement." Nitch's attorney advised the court of this provision of the plea agreement during sentencing.

The district court advised Nitch it would follow the plea agreement with a few modifications. The court sentenced Nitch to 365 days in the county jail with all but four days suspended, and placed him on probation "under the terms and conditions [the Department of Correctional Services] deem appropriate." It also ordered Nitch to pay a $500 fine. Nitch appeals.

The district court did not expressly require Nitch to register as a sex offender in either its written sentencing order or at the sentencing hearing. Nitch claims his probation officer informed him he must register as a sex offender as a condition of probation. Nitch asks this court to remand his case for resentencing

to reconcile "apparent inconsistencies between the oral sentencing record and the written sentencing order."

Nitch's claim involves actions taken by the Department of Correctional Services. Nothing in the record shows the Department of Correctional Services has required Nitch to register as a sex offender. Thus, there is nothing in the record for us to review regarding the issue Nitch raises. The case is not ripe for our review. *State v. Iowa Dist. Ct.*, 616 N.W.2d 575, 578 (Iowa 2000) (A case is ripe for adjudication when it presents an actual, present controversy, as opposed to one that is merely hypothetical or speculative). Moreover, even if Nitch is required to register as a sex offender, he has failed to exhaust administrative remedies available to him under Iowa law.[1]

AFFIRMED.

[1] Iowa Code section 692A.8 provides a person who registers under Chapter 692A may request the department of public safety determine whether the offense for which the person is convicted requires registration. Further, Nitch's claim also may have fallen within the scope of the Iowa Administrative Procedures Act in Iowa Code Chapter 17A, which requires exhaustion of administrative remedies before judicial review of agency action.