FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

290

STATE OF IOWA,)

Plaintiff-Appellee,) Filed November 26, 1980

vs.)

LARRY DON LINGLE,) 0-330
64458

Defendant-Appellant.)

Appeal from Union District Court - James E. Brown and Robert O. Frederick, Judges.

Defendant appeals his conviction and sentence for the forcible felony of sexual abuse in the second degree in violation of section 709.3(2), The Code 1979. AFFIRMED.

Stuart D. Nielsen, Corning, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Jeanine Freeman, Assistant Attorney General; and Arnold O. Kenyon III, Union County Attorney; for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Defendant appeals his conviction and sentence for the forcible felony of sexual abuse in the second degree in violation of section 709.3(2), The Code 1979. He attacks the constitutionality of section 907.3 under which he is ineligible for a deferred judgment, deferred sentence or suspended sentence because sexual abuse in any degree is a forcible felony under section 702.11. Under section 907.3, one who pleads guilty or is convicted of a forcible felony is not eligible for a deferred judgment or a deferred or suspended sentence. We affirm.

The only time that section 907.3 was mentioned was at a pretrial hearing in which the court rejected a plea bargaining agreement whereby the defendant would plead guilty to the crime charged and the State would recommend probation. At no time before or during trial or during the sentencing proceedings did defendant raise the constitutional issue urged on this appeal. Constitutional claims not presented to the trial court may not be argued for the first time on appeal. State v. Jones, 289 N.W.2d 597, 599 (Iowa 1980).

Even if error was preserved, defendant's constitutional argument is without merit. He claims the operation of section 907.3 violates his equal protection and due process rights because there is no rational basis for conditioning the availability of rehabilitative services on the presence or absence of force in the crime charged. The Iowa Supreme Court decided a similar issue contrary to defendant's position in State v. Hall, 227 N.W.2d 192 (Iowa 1975). The court held that section 789A.1, The Code 1975 (the predecessor to the current section 907.3) was not unconstitutional in providing for mandatory prison sentences for those found guilty of violating enumerated drug trafficking laws. The court found a rational relationship between the sentencing scheme and the legitimate governmental interest in deterring drug abuse and sales. 227 N.W.2d at 194. Defendant suggests no reason for distinguishing this case from Hall.

We therefore affirm defendant's conviction and sentence.

AFFIRMED.