FILED
AUG 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed August 29, 1985

vs.)

TIMOTHY C. FLOREA,) 5-96
84-903

Defendant-Appellant.)

Appeal from the Iowa District Court for Keokuk County - D. B. Hendrickson, Judge.

Defendant appeals from the life sentence imposed following his conviction for kidnapping in the first degree in violation of Iowa Code section 710.2. AFFIRMED.

Douglas C. Scovil of Ruud & Scovill, Rock Island, Illinois, for defendant-appellant.

Thomas J. Miller, Attorney General, and Steven K. Hansen, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., Schlegel, and Hayden, JJ.

PER CURIAM

Defendant appeals from the life sentence imposed following his conviction for kidnapping in the first degree in violation of Iowa Code section 710.2. The factor which elevated the kidnapping to first degree was sexual abuse of the victim. Defendant does not challenge his conviction. He argues only that his sentence of life imprisonment was unconstitutional.

Defendant requested a presentence investigation report which was denied by the district court. In an order dated March 20, 1985, we remanded the case to the district court for the limited purpose of ordering a presentence investigation report to be made and sent directly to us. After consideration of this report we conclude that defendant's challenges to the sentence are without merit.

Defendant's first argument is that the sentence is disproportionate to the severity of the crime and, therefore, constitutes cruel and unusual punishment. The supreme court has recently addressed the question and determined that a life sentence for first-degree kidnapping based on sexual abuse is not constitutionally defective. State v. Nims, 357 N.W.2d 608, 610-11 (Iowa 1984); Lamphere v. State, 348 N.W.2d 212, 220-21 (Iowa 1984). We see no reason why those holdings should not apply in this case.

The second argument raised by defendant is that Iowa Code sections 710.2 and 902.1 are a legislative encroachment upon the authority of the judiciary which violates the constitutional separation of powers. The supreme court has held, however, that the sentencing of a criminal defendant is not a purely judicial function. "The legislature possesses the inherent power to prescribe punishment for crime, and the sentencing authority of the courts is subject to that power." State v. Iowa District Court for Shelby County, 308 N.W.2d 27, 30 (Iowa 1981). It is within the legislature's prerogative to fix a mandatory life sentence for the crime of first-degree kidnapping. State v. Nims, 357 N.W.2d at 611.

AFFIRMED.