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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-026 / 90-809

196

STEVEN L. TOBIN,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Linn County, William R. Eads, Judge.

Applicant appeals denial of postconviction relief. **AFFIRMED.**

Wallace L. Taylor, Cedar Rapids, for appellant.

Bonnie J. Campbell, Attorney General, Bruce Kempkes, Assistant Attorney General, Denver D. Dillard, County Attorney, and Scott C. Peterson, Assistant County Attorney, for appellee.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

PER CURIAM

Applicant Steven Leon Tobin appeals a district court order denying postconviction relief. He argues that his direct-appeal counsel was ineffective because of counsel's failure to raise a challenge to the constitutionality of Iowa Code section 725.2, under which he was convicted. We affirm the denial of postconviction relief.

Tobin was convicted in a bench trial of a charge of pimping. Iowa Code section 725.2 provides that one "who knowingly takes or shares in the earnings of a prostitute . . . commits a class 'D' felony." Tobin appealed, and the Iowa Supreme Court affirmed per curiam stating that the evidence "was ample to show defendant willingly shared earnings of prostitutes and was guilty of violating section 725.2." State v. Tobin, No. 86-1122, slip op. at 2 (filed Aug. 3, 1987).

Ordinarily, our review of postconviction relief proceedings is for errors of law. Hinkle v. State, 290 N.W.2d 28, 30 (Iowa 1980). However, when a postconviction petitioner asserts violation of constitutional safeguards, we review de novo. Id.

Tobin argues that the district court erred in failing to find that his direct-appeal counsel was ineffective by reason of his failure to challenge section 725.2 as being void for vagueness. We need not address that claim, however, because we find appellant could not have been prejudiced. Taylor v. State, 352 N.W.2d 683, 685 (Iowa

1984) (may dispose of claim for lack of prejudice without addressing alleged deficiency of counsel).

Our supreme court has stated: "[T]o withstand a constitutional attack, a penal statute must satisfy two standards: '(1) it must give a person of ordinary intelligence fair notice of what is prohibited, and (2) it must provide an explicit standard for those who apply it.'" Saadiq v. State, 387 N.W.2d 315, 321 (Iowa 1986) (quoting State v. Pierce, 287 N.W.2d 570, 573 (Iowa 1980)). One challenging a statute must carry the difficult burden of proving the existence of a constitutional violation beyond a reasonable doubt. Id. at 320.

In interpreting a penal statute we construe it strictly and resolve doubts in favor of an accused, but we will not read a statute so strictly as to defeat obvious legislative intent. State v. Williams, 315 N.W.2d 45, 49 (Iowa 1982) (citations omitted); see also Iowa Code § 4.4 (1991) (presumptions of enactments); Iowa Code § 4.6 (1991) (interpretation of ambiguous statutes). We may ascertain the meaning of a statute "by reference to prior judicial decisions, similar statutes, the dictionary, or common generally accepted usage." Williams, 315 N.W.2d at 49 (quoting State v. Sullivan, 298 N.W.2d 267, 270 (Iowa 1980)).

The supreme court has stated that "the intent or belief of the accused is the controlling factor under section 725.2." Williams, 315 N.W.2d at 51. We have noted that

"pimping is the function of living off the earnings of the prostitute." State v. Clark, 406 N.W.2d 802, 804 (Iowa App. 1987) (citations omitted). Given these principles and judicial constructions of section 725.2, we conclude that the phrase "knowingly takes or shares in the earnings of a prostitute" is not vague. The statute unambiguously gives notice that the proscribed activity is specifically intending to derive income from the income generated by the illegal sale of sexual services. We think this is an explicit standard for those who must apply the statute.

Tobin's overbreadth challenge is utterly meritless. He contends that the statute violates his rights of privacy and freedom of association. State v. Pilcher, 242 N.W.2d 348 (Iowa 1976). This is untrue. The statute only prohibits the intentional sharing of illegal income.

We find that applicant Tobin could not have been prejudiced by his direct-appeal counsel's failure to raise the issue of vagueness. We conclude that he did not suffer ineffective assistance of counsel. We hold that the trial court did not err in denying postconviction relief.

AFFIRMED.