



Iowa General Assembly

2005 Legal Updates

Legislative Services Agency – Legal Services Division

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RESIDENCY RESTRICTIONS FOR SEX OFFENDERS RESIDING NEAR A SCHOOL OR CHILD CARE FACILITY

Filed by the Iowa Supreme Court

July 29, 2005

State of Iowa v. Keith Frederick Seering

No. 34/03-0776

<http://www.judicial.state.ia.us/supreme/opinions/20050729/03-0776.asp>

Factual and Procedural Background. In October 2000, Keith Seering was convicted of lascivious conduct with a minor after committing numerous sexually abusive acts against his daughter. After being released from prison in August 2002, Seering moved to Riverside, Iowa, with his wife and daughter. Seering registered as a sex offender in Johnson County and was informed by the sheriff that his new residence was within 2,000 feet of a school in violation of Iowa Code §692A.2A. Seering was given one week to move his residence. Upon a subsequent check by the Johnson County sheriff, it was determined Seering had not moved his residence and he was subsequently arrested and charged with violating the residency restriction statute.

On February 10, 2003, Seering filed a motion to dismiss the criminal charge against him because the residency restriction was unconstitutional.

On April 3, 2003, the district court agreed the residency restriction was unconstitutional on due process, ex post facto, self-incrimination, and cruel and unusual punishment grounds, and granted Seering's motion to dismiss. The State appealed the issue of whether the residency restriction for sex offenders residing near a school or child care facility was unconstitutional on substantive and procedural due process, ex post facto, self-incrimination, and cruel and unusual punishment grounds.

Analysis.

Substantive Due Process. Under Iowa law, the Court first determined the right involved in the case. Seering contended the residency restriction has a direct and substantial impact on his familial relationship. Using the rational basis standard, the Court determined there was a reasonable fit between the government interest of preventing sex offenders from reoffending and the means used to advance the government interest.

Procedural Due Process. The Court first determined whether there was a "protected liberty or property interest involved." Seering claimed he was entitled to a hearing. The Court concluded that since there are no exemptions in the statute, Seering was not entitled to a hearing to determine if the residency restrictions applied to him.

Ex Post Facto. The federal and state constitutions forbid the application of a new punitive measure to conduct committed prior to the enactment of a criminal statute. The Court concluded the residency restrictions were not punitive in nature and thus did not violate the ex post facto clause. The Court reasoned that a sex offender does not face punishment under the residency restriction statute merely because the person is a sex offender, but that the sex offender must first violate the residency restrictions to be punished under the new law.

Self-Incrimination. The Court also disagreed that the new residency restrictions compelled a sex offender to incriminate oneself by registering his home address. The Court concluded there is nothing in the statute that compels a sex offender to be a witness against oneself, and stated any self-incrimination challenge is premature.

Cruel and Unusual Punishment. The Court reviewed three factors in determining whether a sentence constitutes cruel

and unusual punishment. First, the Court weighs the gravity of the crime and the harshness of the penalty; second, the Court reviews the sentences imposed on other criminals in the same jurisdiction; and third, the Court reviews sentences imposed in other jurisdictions for the same crime. The Court concluded the potential penalty (aggravated misdemeanor) for violating the residency restriction was not cruel and unusual in this case.

Conclusion. The Court concluded Seering suffered no deprivation of federal or state constitutional rights related to substantive or procedural due process, ex post facto laws, self-incrimination, or cruel and unusual punishment.

Dissent. The dissent concluded the residency restriction violated the ex post facto clause. Justice Wiggins opined that the new law in effect effectively banishes sex offenders from communities and thus should be considered a new punishment for ex post facto purposes.

Unresolved Issues. Seering's other arguments pertaining to overbreadth, right to travel, vagueness, equal protection, and bills of attainder were not properly preserved for appeal and thus were not decided in this case.

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