State of Iowa v. Cameron James Hess

2022 | Cited 0 times | Supreme Court of Iowa | December 29, 2022

IN THE SUPREME COURT OF IOWA

No. 21 0079

Submitted September 14, 2022 Filed December 29, 2022

STATE OF IOWA,

Appellee,

vs.

CAMERON JAMES HESS,

Appellant.

Appeal from the Iowa District Court for Polk County, Sarah E. Crane,

Judge.

Defendant prosecuted in district court for felony sex offenses committed as a juvenile appeals his sex offender registration requirement and special sentence imposed after he reached adulthood. AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Waterman, J., delivered the opinion of the court, in which Christensen, C.J., and Mansfield and McDermott, JJ., joined. McDonald, J., filed an opinion concurring in part and dissenting in part, in which Oxley and May, JJ., joined.

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Martha J. Lucey, State Appellate Defender, and Josh Irwin (argued),

Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, and Louis S. Sloven (argued),

Assistant Attorney General, for appellee. WATERMAN, Justice.

In this appeal, a defendant who at age seventeen confessed to sexually abusing three children was prosecuted in district court, convicted on four class B felony counts, and sentenced at age twenty. The district court suspended his sentence of incarceration and placed him on probation without suspending his lifetime special sentence under Iowa Code section 903B.1 or his sex offender registration requirement under chapter 692B. The defendant argued in district court that the sex offender registration requirement was unconstitutional under In re T.H., which held that imposing the requirement on a minor in juvenile court proceedings constitutes punishment. 913 N.W.2d 578, 596 (Iowa 2018). The sentencing court ruled that In re T.H. does not apply to a committed as a juvenile and instead followed State v. Aschbrenner, 926 N.W.2d 240, 249 (Iowa 2019), which held that the registration requirement imposed on an adult is nonpunitive.

The defendant appealed, renewing his constitutional challenge to the sex offender registration requirement and further arguing that the district court failed to exercise its discretion under Iowa Code section 901.5(13) to suspend that registration requirement and his lifetime special sentence. The State argues

that we should distinguish or overrule In re T.H. and that the sex offender registration and special sentence are mandatory. We retained the case to decide these questions. On our review, we hold that In re T.H. applies only to juvenile sex offenders whose cases are prosecuted and resolved in juvenile court, and we decline the apply its holding to a juvenile offender prosecuted and convicted in district court. Sex offender registration protects the public regardless of the age of the offender and is properly viewed as nonpunitive for adults as well as juveniles who are prosecuted in district court. As matters of first impression, we hold that the district court lacks discretion under Iowa Code section 901.5(13) to suspend the sex offender registration but does have discretion to suspend the section 903B.1 lifetime special sentence for offenses committed by a juvenile. Because the district court failed to exercise discretion, we remand for resentencing.

I. Background Facts and Proceedings.

Defendant Cameron James Hess is now twenty-two years old. His parents separated years ago. Hess has several half- and step-siblings. Hess lived with his mother and stepfather and attended high school in Van Meter, but he spent significant time in De Soto with his maternal grandparents and in Des Moines with his father and stepmother. During his time at those households, Hess sexually abused children, including his family members.

Hess began sexually abusing his younger half-sister, A.H., in 2010. Hess

abused A.H. through manual fondling and digital penetration of her genitals

when she was four years old. In 2011, admonished him to stop. By all accounts, Hess stopped abusing A.H. In 2016, Hess began abusing M.F., a neighbor in Des Moines. Hess forced

M.F. to kiss him and forced oral sex on her repeatedly. Hess threatened to hurt

her if she told anyone. M.F. was seven years old.

In early 2018, Hess abused C.H., his younger half-sister. Hess subjected

C.H. to manual fondling of her genitals and forced oral sex. C.H. was five or six

years old.

In May 2018, when M.F. was nine years old and Hess was seventeen, she

reported his abuse. Des Moines Police officers investigated and discovered that

Hess had also abused A.H. and C.H. Officers referred the three girls for forensic

Hess confessed to two instances

of forced sexual contact with A.H., two with M.F., and two more with C.H.

The State charged Hess with six counts of second-degree sexual abuse, a

class B felony, in 2018 two counts each arising sexual contact

with A.H., M.F., and C.H. Iowa Code §§ 709.1(1), .1(3), .3(2) (2017). 1 At that time,

Hess was seventeen years old. Although he was a juvenile, commenced in district court because he was over age sixteen and was charged

with a forcible felony. Id. § 232.8(1)(c).

Hess filed a motion to transfer his case to juvenile court. The district court

s motion, noting that t]he crimes that the

Defendant is accused of are severe and pervasive he sexual abuse

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1 According to the trial information, Hes between 2016 and 2018. The substance of the applicable criminal provisions remained unchanged throughout this period. We cite the 2017 version of the Iowa Code for the sake of convenience. alleged in the six counts cover a time period of eight years . . . [with victims] who

were at various times 6, 7, and 10 years of age. The court relied in part on a

juvenile court officer report that Hess, now age eighteen, ju eligible for supervision by

the Juvenile Court for only 18 months consequences for the Defendant are severe he consequences to the

public are also severe if the Defendant is not properly deterred, supervised[,] and

Hess waived his right to a jury trial, and the case proceeded to a bench

trial on the minutes when Hess was age nineteen. On September 2, 2020, the

district court found Hess guilty on four of the six counts. 2 The district court

conducted a two-day sentencing hearing by GoTo Meeting in January 2021. Hess

was then age twenty. A defense expert, Dr. Luis Rosell, testified about juvenile

nd risk assessment scores, and

testing referenced in the presentence investigation report. Dr. Anthony Tatman,

director of the Fifth Judicial District Department of Corrections, testified on the

same subjects. The court also heard from a victim stepmother 2

The State conceded that the district court lacked jurisdiction over the other two offenses, which were committed before Hess turned fourteen years old; for that reason, the court found Hess not guilty on those counts. See Iowa Code § 232.45(6)(a); State v. Duncan, 841 N.W.2d 604, 611, 614 (Iowa Ct. App. 2013) (relying on State v. Bruegger, 773 N.W.2d 862, 885 (Iowa 2009), in holding that a defendant cannot be tried in district court for offenses committed before fourteen years of age). Although Hess was not found guilty of criminal sexual abuse of A.H. due to his age at the time, the minutes of testimony describing that abuse are part of the trial record. emotional damage that this child has received is beyond anything I can describe

that that their family is

Defense counsel requested a deferred judgment and raised constitutional objections to imposing the sex offender registration requirement, relying on In re T.H. Defense counsel otherwise never argued that the court had discretion under Iowa Code section 901.5(13) to suspend the sex offender registration or special sentence. The prosecutor argued that the sex offender registration and section 903B.1 special life sentence were mandatory but recommended suspended prison sentences and five-year probation. Th s request for deferred judgment and sentenced Hess to concurrent sentences of twenty-five years on each count, suspended the prison sentences, placed Hess on probation for five years, imposed the special sentence of lifetime parole applicable to class B felonies under Iowa Code section 903B.1, and required Hess to register as a sex offender under section 692A.103(1). The court gave no indication suggesting that it had discretion to suspend the special sentence or sex offender registration requirement.

Hess appealed, renewing his argument that it is unconstitutional under In re T.H. to require sex offender registration for offenses he committed as a juvenile. Hess also argues on appeal that the district court had discretion to suspend the special sentence and sex offender registration requirement and failed to exercise that discretion. The State argues that we should distinguish or overrule In re T.H. that the special sentence and sex offender registration are mandatory collateral

consequences of

his convictions. We retained the case.

II. Standard of Review.

offender registration Aschbrenner, 926 N.W.2d at 245 46.

[W]e must remember that statutes are cloaked with a presumption of constitutionality. The challenger bears a heavy burden, because [he] must prove the unconstitutionality beyond a reasonable doubt. Moreover, the challenger must refute every reasonable basis upon which the statute could be found to be constitutional. Furthermore, if the statute is capable of being construed in more than one manner, one of which is constitutional, we must adopt that construction.

Id. at 246 (alterations in original) (quoting State v. Seering, 701 N.W.2d 655, 661

(Iowa 2005), superseded by statute on other grounds, 2009 Iowa Acts ch. 119,

§ 3 (codified at Iowa Code § 692A.103 (Supp. 2009)), as recognized in In re T.H.,

913 N.W.2d at 587 88))

Maxwell

Safety, 903 N.W.2d 179, 182 (Iowa 2017).

s decision to impose a specific sentence that falls

. . . State v. Wilbourn, 974 N.W.2d 58, 67 (Iowa 2022) (omission in original)

(quoting State v. Davison, 973 N.W.2d 276, 289 (Iowa 2022))

Id. (quoting

Davison, 973 N.W.2d at 289). III. Analysis.

Hess raises both constitutional and statutory challenges to his special

sentence and sex offender registration requirement. He argues that the district

court has discretion under Iowa Code section 901.5(13) to suspend the special

sentence and registration requirement. Normally, we would perform the statutory analysis first to avoid the constitutional question if possible. But as this case is postured, the constitutional question must be answered regardless the special sentence

and sex offender registration requirement are mandatory consequences under the statutory scheme, the constitutional challenge remains. If the court had discretion to suspend the registration or special sentence and failed to exercise its discretion, the remedy is resentencing. Wilbourn, 974 N.W.2d at 67. The question then would arise on remand whether the consequences could be imposed constitutionally under In re T.H. when Hess was a minor at the time he committed the sex offenses. We elect to address the constitutional claim first.

A. Is Sex Offender Registration Cruel and Unusual Punishment for Crimes Committed as a Juvenile? Hess relies on In re T.H. for the proposition that requiring a juvenile offender to register as a sex offender is unconstitutional cruel and unusual punishment. In In re T.H., we held that mandatory sex offender registration for a juvenile sex offender prosecuted in juvenile court amounted to punishment but not cruel and unusual punishment for constitutional purposes. 913 N.W.2d at 596 97. In so doing, we drew a line between juvenile offenders and adult offenders, for whom mandatory sex offender registration remains nonpunitive. See Aschbrenner, 926 N.W.2d at 248 49. The State argues that In re T.H. does not apply because Hess was prosecuted

in district court and reached adulthood before his sentencing. Alternatively, the

State urges us to overrule In re T.H. as wrongly decided and difficult to

administer. In re T.H.

In Aschbrenner, which involved an adult sex offender, we concluded that

In re T.H. is readily distinguishable based on the unique concerns of juvenile

. One factor

we used to distinguish adults from juveniles was the publicity of the proceedings:

s criminal conviction is already a matter of public record,

transferred to adult criminal court. Id. Here, Hess was tried in district court, so

record of his conviction was never sealed. Hess therefore stands in a position

closer to Aschbrenner than to In re T.H. We decline to apply In re T.H. to juvenile

challenge to his sex offender registration requirement. 3

B. Whether the District Court Has Discretion Under Iowa Code

Section 901.5(13) to Suspend the Sex Offender Registration Requirement.

s statutory claims. He argues that the district court had

discretion under Iowa Code section 901.5(13) to suspend the sex offender

registration requirement as part of his sentence. The State responds that sex

3 The State asks us to overrule In re T.H. We do not reach that issue. offender registration is a mandatory collateral consequence of his conviction and

not a ection 901.5(13). This

is a question of first impression, but it is easily answered by applying State v.

Richardson, 890 N.W.2d 609, 619 (Iowa 2017). We begin with the text of the

statute:

13. Notwithstanding any provision in section 907.3 or any other provision of law prescribing a mandatory minimum sentence for the offense, if the defendant, other than a child being prosecuted as a youthful offender, is guilty of a public offense other than a class the offense was committed, the court may suspend the sentence in whole or in part, including any mandatory minimum sentence, or with the consent of the defendant, defer judgment or sentence, and place the defendant on probation upon such conditions as the court may require.

Iowa Code § 901.5(13). This provision nowhere mentions sex offender

registration or the sex offender registry chapter, Iowa Code chapter 692A. Hess

nevertheless be suspended for juvenile offenders.

We rejected a similar argument in Richardson, which addressed the same

statute (previously numbered 901.5(14)) to hold that criminal restitution

imposed under chapter

890 N.W.2d at 619. We noted that section 901.5 does not mention restitution or

cross-reference the restitution statute and that be imposed later, and operates independently from the section 901.5 sentencing

Id. at 616, 619. The same is true for sex offender

registration under chapter 692A. See Maxwell, 903 N.W.2d at 184 (describing

the sex offender registration requirement as a mandatory, automatic collateral consequence of the judgment of conviction). And as we determine today, for

juvenile offenses prosecuted in adult court, the sex offender registration

requirement is a regulatory measure to protect the public, not punishment. For

these reasons, we hold that registration under chapter 692A is not part of the

statutory challenge to his sex offender registration requirement and affirm the

.

C. Whether the District Court Has Discretion Under Iowa Code

Section 901.5(13) to Suspend a Special Sentence Under Section 903B.1.

Hess argues that the district court had discretion under Iowa Code

section 901.5(13) to suspend his special sentence of lifetime parole imposed

under section 903B.1. 4 We agree. Section 901.5(13) allows the court to suspend

4

Iowa Code section 903B.1 provides: A person convicted of a class chapter 709, a class 713.3, subsection 1, paragraph or a class 728.12, shall also be sentenced, in addition to

any other punishment provided by law, to a special sentence committing the person into the custody of the director of the Iowa department of corrections for the rest of the p provided in chapter 906. The board of parole shall determine whether the person should be released on parole or placed in a work release program. The special sentence imposed under this section shall commence upon completion of the sentence imposed under any applicable criminal sentencing provisions for the underlying criminal offense and the person shall begin the sentence under supervision as if on parole or work release. The person shall be placed on the corrections continuum in chapter 901B, and the terms and conditions of the special sentence, including violations, shall be subject to the same set of procedures set out in chapters 901B, 905, 906, and 908, and rules adopted under those chapters for persons on parole or work release. The revocation of release shall not be for a period greater than two years upon any first revocation, and five years upon any second or subsequent revocation. A special sentence shall be considered a category purposes of calculating earned time under section 903A.2. committed an offense under the age of eighteen. Although section 901.5(13)

makes no mention of section 903B.1, the immediately preceding subsection

does. See Iowa Code § penalty imposed against the defendant, the court shall impose a special sentence

if required under section . We must decide whether

901 section 903B.1, as referenced in section 901.5(12).

The dissent disregards the juxtaposition of subsections 12 and 13 of

section 901.5. We read these related statutes together. Kolzow v. State,

813 N.W.2d 731, 736 (Iowa 2012). Textually, a or

type any other

in section sentence that follows in the next clause is not also a sentence. See Star Equip.,

Ltd. v. State (quoting Thomas v. Gavin, 838 N.W.2d 518, 524

(Iowa 2013))). that a special sentence is not a violates the surplusage canon. In our view, has discretion to suspend in section 901.5(13) includes the section 903B.1

special sentence referenced in section 901.5(12).

Indeed, o chapter 903B special sentences

as part of the def See, e.g., Doss v. State, 961 N.W.2d 701, 710

sentence and could subject him to additional imprisonment; therefore, he had the right to be informed of it be State v. Hallock, 765 N.W.2d

598, 605 (Iowa Ct. App. 2009) (holding that the chapter 903B special sentence

a criminal sentences in the Iowa Code would include within the same circle

chapter 903B special sentences as well as sentences of incarceration imposed

under chapter 907. A special sentence is indeed a sentence or part of the

sentence, and by its terms, section 901.5(13) permits the district court to

suspend any sentence in whole or in part when the offense was committed by a

juvenile.

The dissent relies on the section 901.5, subsection 12,

which mandates the special sentence for sex offenders. Although subsection 12

generally mandates the special sentence for sex offenses, subsection 13 is the

more specific provision and controls when the defendant, like Hess, committed

offenses when the defendant was under the age of eighteen. See Iowa Code § 4.7

(providing that a specific provision controls over a conflicting general provision);

see also Christiansen v. Iowa Bd. of Educ. Exam rs, 831 N.W.2d 179, 189 (Iowa

2013) specific ;

Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts

183 (2012) [hereinafter Scalia & Garner] (stating that when a specific provision

in a statute appears to conflict with a general provision, the specific provision is

treated as an exception to the general provision). The dissent is mistaken to find

general relationship just because the

specific provision did not cross-reference the general. We have repeatedly applied the canon to hold a more specific statute controlled without any cross-reference

to the more general statute. 5 n, too.

We also note that section 901.5(13) was enacted in 2013, 2013 Iowa Acts

ch. 42, § 14 (originally codified at Iowa Code § 901.5(14) (2014), now codified at

Iowa Code § 901.5(13) (2017)), after section 901.5(12) , 2005

Iowa Acts ch. 158, § 37 (originally codified at Iowa Code § 901.5(13) (2007), now

codified at Iowa Code § 901.5(12) (2017)). To the extent the provisions conflict,

the subsequent enactment section 901.5(13) controls. See Iowa Code § statutes enacted at the same or different sessions of the legislature are

irreconcilable, the statute latest in date of enactment by the general assembly

Schmett v. State Objections Panel, 973 N.W.2d 300, 304 (Iowa 2022)

be guided by the legislature s last

see also The Federalist No. 78, at 404 (Alexander

Hamilton) (George W. Carey & James McClellan eds., Gideon ed. 2001)

which has obtained in the courts for determining . The

5 See, e.g., Des Moines Area Reg l Transit Auth. v. Young, 867 N.W.2d 839, 846 (Iowa 2015) (concluding that the more specific statute, which does not cross-reference the more general, controlled over the more general); In re A.M., 856 N.W.2d 365, 372 the limited exception to the patient-psychotherapist privilege in CINA adjudicatory hearings in section 232.96(5) prevails over the general privilege and confidentiality protections for mental In re Det. of Geltz, 840 N.W.2d 273, 276 77 (Iowa 2013) (holding that a more specific statute controls over the more general without a cross-reference between the two); Christiansen, 831 N.W.2d at 189 (same); Griffin Pipe Prods. Co. v. Bd. of Rev., 789 N.W.2d 769, 775 (Iowa 2010) (concluding that a later paragraph, without a cross-reference, created an exemption from a tax imposed in an earlier paragraph); McElroy v. State, 637 N.W.2d 488, 494 (Iowa 2001) (concluding that a more specific rule of civil procedure controls over a more general one without a cross-reference between the two). The text of section 901.5 provides further support for our interpretation.

Richardson held that the district court lacked discretion to suspend a juvenile

victim restitution under section 901.5, subsection 13 in part because

restitution is nowhere mentioned in section 901.5 or its fourteen subsections.

890 N.W.2d at 616; see also Iowa Code § 901.5. Chapter 903B special sentences,

however, are expressly addressed in subsection 12, immediately preceding

subsection 13. Compare Iowa Code § 901.5(12), with id. § 901.5(13). Richardson

primarily relied on section clause that precedes all of its

subsections time fixed by the court for pronouncement of judgment and sentence.

890 N.W.2d at 616 (quoting Iowa Code § 901.5). As with sex offender registration

requirements, victim restitution may be imposed later. See id. at 619. By

contrast, special sentences must be imposed and pronounced at sentencing.

The State and dissent argue we should interpret the statutes in context to

901.5(13) to mean only a prison sentence, while

the special sentence in section ,

overlooking several statutes discussed below, argues that the Code nowhere

901.5

See, e.g., Iowa Code § 901.5(3).

Nobody argues that the court is without discretion to suspend fines. And that

Id.; see also id. § 901.5(13) to a sentence of Importantly, section 901.5(13) begins with an introductory phrase that

confirms it trumps conflicting statutes imposing a mandatory minimum

907.3 or any other provision

of law prescribing a mandatory minimum sentence for the offense . . . .

special sentence in section 903B.1 imposes a mandatory minimum sentence of

parole. See id. § 903B.1 (incorporating section 906.15(1) provisions for

discharging special lifetime sentence); id. § 906.15(1) (requiring a mandatory

minimum period equal to sentence of incarceration before eligibility for discharge

from a section 903B.1 special sentence). Relying on dicta in Richardson, the

dissent argues that sentence

of incarceration. But that view is belied by State v. Graham, where we recognized

that section 906.15 imposes a mandatory minimum period of parole before the

defendant can be discharged from a section 903B.1 special sentence.

897 N.W.2d 476, 488 (Iowa 2017). 6 We cannot rewrite the statute by adding the

6 In Richardson, we gave multiple reasons to conclude that did not include victim restitution. 890 N.W.2d at 614 19. Along the way, we contrasted victim imum 907.3 and other C Id. at 618. Richardson did not involve a special sentence or cite section 903B.1, which, as we subsequently concluded in Graham, imposes a mandatory minimum period of parole, not incarceration. In our view, section 903B.1 is another provision of law imposing a mandatory minimum sentence of parole that can be suspended under section 901.5(13). To the extent the dissent reads Richardson as concluding that a mandatory minimum sentence can only be one of incarceration, that conclusion is dicta and inaccurate as to section 903B.1 that the legislature chose to omit from section

901.5(13). 7

to suspend a sentence in section 901.5(13) supersedes the otherwise conflicting

mandatory language in sections 901.5(12) and 903B.1. See, e.g., United States v.

Shkreli, 47 F.4th the use of such a notwithstanding that the provisions of the notwithstanding section override conflicting

provisions of any other section. Cisneros v. Alpine Ridge Grp., 508 U.S.

10, 18 (1993))).

The dissent ignores a practical problem with its interpretation: that some

offenders would be left in limbo. Section 901.5(13) allows deferred sentences for

juvenile offenders in lieu of a prison sentence. Those offenders in effect never

serve a sentence for the underlying sex offense. Yet the section 903B.1 special

. . for the

903B.1. Under the plain meaning of

section 903B.1, the special sentence would never commence if the juvenile

received a deferred sentence and satisfied its conditions. [t]he

consequences of a particular construction. Id. §

7 nly a period of sentences. Iowa Code § [T]he court may suspend the sentence in whole or in part, including any mandatory minimum sentence . . . . may include a special sentence that can be suspended in whole or in part. The discretion to suspend part of the sentence is not limited to a mandatory minimum sentence or period of incarceration. interpretation violates this canon, among others. By contrast, our interpretation

harmonizes the statutes by allowing the sentencing court to suspend the special

sentence when it grants a deferred sentence for the underlying offense.

Richardson 901.5(13) is

ambiguous. 890 N.W.2d at 617 We apply the rule of lenity in criminal cases,

State v. Zacarias, 958 N.W.2d 573, 581 (Iowa

2021); see also Scalia reasonable doubt persists after the traditional canons of interpretation have been

Bifulco v. United

States

[the rule of lenity] applies not only to interpretations of the substantive ambit of

in section

We are mindful that the purpose of the special sentence in section 903B.1

is to protect the public from sex offenders. See State v. Wade, 757 N.W.2d 618,

scheme to require additional supervision for sex offenders consistent with the

. The plain meaning of

the language codified in section 901.5(13) merely allows the court to suspend

the special sentence in whole or in part; the district court is not required to do

so when considering public safety. We hold that Iowa Code section 901.5(13) allows the district court

to

903B.1 special sentence in whole or in part. Because the

district court did not exercise its discretion on whether to impose that special

sentence, resentencing is required. Wilbourn, 974 N.W.2d at 67.

IV. Disposition.

For the foregoing reasons, we affirm

requirement. We remand the case for resentencing consistent with this opinion.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Christensen, C.J., and Mansfield and McDermott, JJ., join this opinion.

McDonald, J., files an opinion concurring in part and dissenting in part, in which

Oxley and May, JJ., join. #21 0079, State vs. Hess.

McDONALD, Justice (concurring in part and dissenting in part).

inherent power to prescribe punishment for crime, and the sentencing authority

State v. Iowa Dist. Ct., 308 N.W.2d 27, 30

(Iowa 1981). Pursuant to that inherent authority, the legislature has prescribed

mandatory terms of incarceration for certain offenses in Iowa Code section 907.3

and mandatory minimum sentences of incarceration for certain offenses in other

provisions of law. In Iowa Code section 901.5(13), the legislature vested the

district court with discretion to not impose what would otherwise be a mandatory

term of incarceration under section 907.3 or a mandatory minimum sentence of

incarceration under any other provision of law for an offender under the age of

eighteen not convicted of a class 901.5(13),

properly understood, does not vest the district court with discretion with respect

to any other type of sentencing provision, including the sex offender registration

requirement under chapter 692A and the special sentence for sex offenders

under sections 903B.1, 903B.2, and 901.5(12). I respectfully dissent from the

contrary conclusion.

I.

The question presented is: What additional authority does

section 901.5(13) give the district court at the time of sentencing? The inquiry

begins with the language of the statute at issue. Doe v. State, 943 N.W.2d 608,

610 (Iowa 2020). Using traditional interpretive tools, we seek to determine the fair and ordinary meaning of the statutory language at issue. Id. In determining

the fair and ordinary meaning of the statutory language at issue, the court

other provisions of related statutes. See Iowa Code § 4.1(38) (2017); State v. Doe,

903 N.W.2d 347, 351 (Iowa 2017).

With respect to offenders under the age of eighteen not convicted of a

class 901.5(13) gives the district court sentencing authority it

otherwise would not have. Specifically, the statute gives the district court the

901.5(13). The statute also gives the district

gment or sentence, and place the defendant on

Id.

The statute does not, however, provide the district court with this

additional sentencing authority as an exception to any and all mandatory

sentencing provisions. Instead, the statute provides the district court with

(1)

prescribing a mandatory minimum se Id. To understand

the boundaries of the additional authority granted in section 901.5(13), we must

first understand the substantive ground in these two particular sentencing

provisions to which section 901.5(13) is an exception.

Section

As the title suggests, section State v. Richardson, 890 N.W.2d 609, 617 (Iowa 2017). The section relates to sentences of

felonies[,] where incarceration is mandatory and the deferred and suspended

Id. Section 907.3 has nothing to do with and nothing

to say about the sex offender registration requirement under chapter 692A or

the special sentence under sections 903B.1, 903B.2, or 901.5(12).

Section section 907.3 is thus a grant of additional

authority to defer or suspend what would otherwise be a mandatory sentence of

incarceration.

Section 901.5(13) grants the district court discretionary authority with

901.5(13). In State v. Richardson, we

section 901.5(13). 890 N.W.2d at 618. We explained the phrase commonly refers

to incarceration:

Notably, judgment that a court formally pronounces after finding a criminal

amount of time that a convicted criminal must serve in prison

Sentence, Black s Law Dictionary (10th ed. 2014); Minimum Sentence, Black s Law Dictionary; see State v. Hoyman, 863 N.W.2d 1, 11 (Iowa 2015) (citing Black s Law Dictionary in interpreting a criminal statute).

incarceration. See Iowa Code § 124.413 (section entitled id. § 232.45(14)(a) (cross-referencing section 124.413); id. § 462A.14(3)(a id. § inform the defendant of the mandatory minimum sentence, if one is

id. §

guilty or cooperates in the prosecution of other persons); id. § 903A.2(5) (addressing the interaction between earned time accrued by inmates an id. § 903A.5(1) (addressing the interaction between earned time and id. § inmate serving a mandatory minimum sentence of one year or more

. . . id. § 906.5(1)(a) (stating that the board of parole does not id. § 907.3(1)(a

sentence must be served or mandatory minimum fine must be id. § 907.3(2)(a id. § 907.3(3)(c)

id. § 907.3(3)(f a violation of sec

Id. (alterations and omission in original) (emphases added). The Richardson court

section Id. at

619. Thus, the about the sex offender registration requirement under chapter 692A or the

special sentence under sections 903B.1, 903B.2, or 901.5(12). The exception

contained in section 901.5(13) is thus a grant of additional authority to defer or

suspend what would otherwise be a mandatory minimum sentence of

incarceration.

The conclusion that section 901.5(13) relates only to mandatory sentences

of incarceration or mandatory minimum sentences of incarceration is supported

by the text of related statutes. See Griffin Pipe Prods. Co. v. Guarino, 663 N.W.2d 862, 865 (Iowa 2003) (stating that where statute is ambiguous, we look to other

statutes to try to read them as an integrated whole). The related statutes provide

that the registration requirement and the special sentence are mandatory in all

circumstances and discretionary in none. Iowa Code section 692A.103 provides

that a person convic shall register (Emphasis added.) Iowa code section 903B.1 provides that persons convicted of

shall committing the person into the custody of the director of the Iowa department of

e. (Emphasis added.) Iowa Code

section 903B.2 provides that persons convicted of qualifying class shall sentence committing the

person into the custody of the director of the Iowa department of corrections for

a period of ten years. (Emphasis added.) Iowa Code section 901.5(12) provides

nd

sentence, . . . the court shall impose a special sentence if required under section

(Emphasis added.)

a duty and denies the existence of discretion. See Iowa Code § 4.1(30)(a) (defining

); State v. Klawonn, 609 N.W.2d 515, 522 (Iowa 2000) (en banc)

requirement and special sentence shall be mandatory in all circumstances, a

legislative exception to these mandatory schemes would likely be equally unambiguous. But that is not the case. As the majority explains,

section r the sex offender

registry chapter, Iowa Code chapter 692A. imilarly, section 901.5(13) nowhere

901.5(13) does not cross-reference or

in any way address chapter 692A or sections 903B.1, 903B.2, or 901.5(12).

Generally, linked statutes cross-reference each other. Union, Loc. 199 v. Iowa Bd. of Regents, 928 N.W.2d 69, 77 (Iowa 2019) (noting

that -referenc legislature knows how to cross- Des Moines Flying

Serv., Inc. v. Aerial Servs. Inc., 880 N.W.2d 212, 221 (Iowa 2016). If the

legislature intended to grant the district court additional sentencing authority

with respect to the sex offender registry or the special sentence, it would have

cross-referenced chapter 692A and sections 903B.1, 903B.2, and 901.5(12); just

as it did with section 907.3 and other provisions of law regarding mandatory

minimum sent -reference either

that the statutes operate wholly

independently of each other. Des Moines Flying Serv., Inc., 880 N.W.2d at 221;

see State v. Sluyter, 763 N.W.2d 575, 584 (Iowa 2009) (divining legislative intent,

in part, from lack of cross-reference to another statute).

In sum, the text of the relevant statutes can be harmonized into a coherent

whole. The legislature passed a comprehensive scheme to require the registration

of sex offenders commencing upon the date they are no longer incarcerated and

the mandatory monitoring of those convicted of certain qualifying offenses after they have discharged their respective sentences for the underlying offense. This

scheme is set forth in chapter 692A and in sections 903B.1, 903B.2, and

901.5(12). In 2013, the legislature passed section 901.5(13) to afford the sentencing court some discretion in sentencing offenders under the age of eighteen. See 2013 Iowa Acts ch. 42, § 14 (originally codified at Iowa Code § 901.5(14) (2014), now codified at Iowa Code § 901.5(13) (2017)). That discretion exists only with respect to what would otherwise be mandatory sentences or mandatory minimum sentences of incarceration. This is evident from the 901.5(13) and the specific cross-references to section 907.3 and other provisions of law relating to mandatory minimum sentences. This is also evident from the lack of any cross-references in section 901.5(13) to chapter 692A or sections 903B.1, 903B.2, or 901.5(12). One would expect the legislature, if it intended to pass a significant exception to its mandatory registration and supervision regime for sex offenders, to at least cross-reference the statutes it deemed implicated by the grant of discretionary authority. The fact that the legislature did not do so speaks volumes about the intended scope of section 901.5(13).

II.

registration requirement and the special sentence to highlight points of disagreement on the question application of section 901.5(13) to both the registration requirement and the special sentence. A.

I agree with the majority that section 901.5(13) does not afford the district

court discretion with respect to the sex offender registration requirements set

forth in chapter 692A. As part of its rationale, the majority explains

section sex offender

registry chapter, Iowa Code chapter with this rationale, and the

majority should stop there.

But the majority does not stop there. As further justification for its

used in section ew, the sex offender registration

npunitive

uspended

under section 901.5(13). I disagree with this rationale. This part of the majority

opinion conflates two separate and distinct concepts punishment and

sentence and is directly contrary to controlling precedents.

The majority contends that anything that is not punishment is not part of

a sentence. This contention is contrary to basic sentencing law. The statutory

of the defendant, and for the protection of the community from further offenses

901.5. Sentences thus frequently

contain many nonpunitive items. Any item addressed at sentencing and

the item is not punitive in nature. See State v. Letscher, 888 N.W.2d 880, 883 (Iowa 2016) (stating that See id.

appearance bond posted by Letscher into a term of the sentencing order. As a

term of sentence, Letscher was entitled to challenge it as any other term of

See

State v. McMurry, 925 N.W.2d 592, 596 (Iowa 2019). An order to complete sex

See State v. Valin, 724

N.W.2d 440, 449 (Iowa 2006). A no- sentence. See State v. Sanchez, No. 13 1989, 2015 WL 4935530, at *5 (Iowa Ct.

App. Aug. 19, 2015). A ten-

sentence. See State v. Robinson, 841 N.W.2d 615, 617 (Iowa Ct. App. 2013). An

See State v.

Sandoval, No. 12 0018, 2012 WL 4101795, at *1 (Iowa Ct. App. Sept. 19, 2012).

There is no shortage of nonp sentence.

but it

is also directly contrary to controlling precedents stating that an order to be

See, e.g.,

State v. Goodson district court entered an illegal sentence because the sentence specified a

duration for his sex offender registration. . . . The State agrees that the district court s sentence is illegal and must be corrected. As a result, we reverse the

illegal portion of Goodson State v. Zacarias, 958 N.W.2d 573, 579

State v. Chapman, 944 N.W.2d 864, 870 71 (Iowa 2020)

State v. Petty, 925 N.W.2d 190, 194

th the sex

State v. Graham, 897 N.W.2d 476, 478 (Iowa 2017)

(allowing challenge to sex offender registration requirement on illegal sentence

grounds).

For these reasons, I join the majority in holding that section 901.5(13) does not afford the district court discretion with respect to the sex offender registration requirement under chapter 692A. I cannot, however, join the

B.

Although the majority correctly holds that section 901.5(13) does not grant the district court authority to suspend the sex offender registration requirement, it also erroneously holds that section 901.5(13) does grant the district court authority to suspend the special sentence. The difference in the ma treatment of the registration requirement and the special sentence is inconsistent, contrary to the purposes of all the relevant statutes, and foreclosed by controlling authority. inconsistent. Why would section 901.5(13) not apply to the registration requirement but apply to the special sentence? The registration requirement and the special sentence work in tandem to provide a continuous process of registration and monitoring of sex offenders. For example, the duration of the registration requirement is determined by the duration of the special sentence. See Iowa Code § 692A.106(2), (4). By way of another example, a sex offender on the registry and also placed on a special sentence may be subject to electronic monitoring. See id. § 692A.124. Because these statutory regimes work in tandem, section 901.5(13) should apply to neither or both. It seems clear to me that section 901.5(13) applies to neither. Perhaps a decent

argument could be made it applies to both.

The majority rejects both of these logically consistent outcomes and instead splits the difference by concluding that section 901.5(13) applies to one but not the other. It is odd to conclude that the legislature intended the grant of additional authority in section 901.5(13) to apply to one and not the other given that the legislature crafted these statutory regimes to work together. It is even more odd to conclude that the special sentence the sentence designed to provide extended supervision for the most heinous sex offenders like Hess is the sentence the legislature intended the sentencing court to have discretion in imposing.

The majority justifies this illogical distinction based on its interpretation

n 901.5(13) grants the

because the sex offender registration requirement is not punishment, it is not a ationale

is incorrect. It is contrary to basic sentencing law and contrary to controlling precedents. See Goodson, 958 N.W.2d at 806; Zacarias, 958 N.W.2d at 579; Chapman, 944 N.W.2d at 870 71; Petty, 925 N.W.2d at 194; Graham, 897 N.W.2d at 478. The majority ignores this and continues on by reasoning that because the special sentence is a type of sentence, section 901.5(13) grants the district court the authority to suspend the special sentence.

ng. There is no doubt that

section 901.5(13) grants the district court discretion with respect to the

imposition of certain types eighteen.

There is also no doubt that section 901.5(13) does not grant the district court discretion with respect to the imposition of any type of sentence on offenders under the age of eighteen. For example, in Richardson, we held that section 901.5(13) does not give the district court discretion to suspend mandatory restitution under section 910.3B, which is punitive and part of the See 890 N.W.2d at 619. And today the majority holds that section 901.5(13) does not give the district court the authority to suspend the sex offender registration requirement even though controlling precedents deem registration a sentence when part of the sentencing order.

The relevant question is thus not whether the special sentence is a type of sentence. The relevant question is whether the special sentence is the type of sentence encompassed in the grant of discretion afforded in section 901.5(13).

By asking the wrong question, the majority gets the wrong answer.

As discussed in part I, the relevant question is what additional authority section 901.5(13) gives the district court at the time of sentencing? By asking the right question, we get the right answer: Section 901.5(13) grants the district court additional discretion only with respect to what would otherwise be mandatory sentences of incarceration or mandatory minimum sentences of incarceration. In addition to the reasons given in part I, this conclusion is supported by additional statutory authority that provides the special sentence is

separate and distinct from the types of sentences encompassed within

section 901.5(13).

These separate authorities are the very statutory provisions creating the

special sentence. Iowa Code section 903B.1 provides that imposed under this section shall commence upon completion of the sentence

imposed under any applicable criminal sentencing provisions for the underlying

sentence imposed under this section shall commence upon completion of the

sentence imposed under any applicable criminal sentencing provisions for the

s 903B.1 and 903B.2 contemplate that a

sex offender will serve some period of incarceration or supervision prior to

commencing the special sentence. In other words, there is a separate sentence

of incarceration or probation that precedes the special sentence and is distinct

from the special sentence. This conclusion is also supported by the fact that the relevant statutes

provide that the special sentence is in addition to any other punishments. Both

Iowa Code sections 903B.1 and 903B.2 provide that section 901.5(12) provides that sentence or other penalty i

901.5(13). See Faheem El v.

Klincar, 527 N.E.2d 307, 310 (Ill. 1988) (stating that

as used in section 901.5(12) wholly superfluou rule of statutory construction, we avoid an interpretation or application of a

Little v. Davis, 974 N.W.2d 70, 75 (Iowa 2022).

The majority tries to avoid these significant problems with its construction

of section 901.5(13) by taking a fallback position: the special sentence for sex

901.5(13). I disagree for three reasons.

ordinary meaning of the statutory language at issue. See Doe, 943 N.W.2d at

610. The criminal law, an inordinary interpretation of the Richardson. As

discussed in part I, in Richardson this court looked exhaustively at how the term

890 N.W.2d at

618. Based on that exhaustive analysis, we concluded that the phrase

901.5(13) refers only to the

Id. than a mandatory minimum term of incarceration is the interpretation of the

dissenters in Richardson. Id. at 630 32 (Appel, J., dissenting). The term

mandated by sections 903B.1, 903B.2, and 901.5(12).

statutory interpretation and construction. In interpreting and construing

statutes, courts should seek

purpose as evidenced in the text of the statute, but the majority seeks to do the

opposite. The majority goes out of its way to interfere with the statutory scheme:

it misstates basic sentencing law, it ignores controlling authority, and it twists

our precedents to create conflict where no conflict exists. For example, the

majority repeatedly states that the more specific provision controls over the

general, but that canon, and the related canons on which the majority rely,

applies only where there is an actual conflict between statutes. See State v. Lutgen, 606 N.W.2d 312, 314 (Iowa 2000) (en banc) nably

harmonize two statutes dealing with the same subject, it must give concurrent

(quoting 82 C.J.S. Statutes § 355, at 474 75 (1999))). As shown above, there is

no actual conflict between statutes here: sections 903B.1, 903B.2, and 901.5(12)

require the imposition of the special sentence, and section 901.5(13) is simply

silent on the issue. It is unclear to me why the majority goes out of its way to put

a stick in th

III.

State v. Wade, 757

N.W.2d 618, 626 (Iowa 2008). This is true with respect to juvenile sex offenders

as well. In 2005, recognizing this risk, the general assembly created a special

sentence for certain high-risk sex offenders. See 2005 Iowa Acts ch. 158, §§ 39,

40 (codified at Iowa Code §§ 903B.1, .2 (2007)). The special sentence mandates

extended monitoring of high-risk sex offenders in the community after the

provisions for the underlying cr § 903B.1, .2. The

purpose of the special sentence is to protect the public by allowing continued

monitoring of certain sex offenders.

To advance this important public-safety purpose, the general assembly

declined to vest the sentencing court with discretion to determine ex ante whether a sex offender should be subject to the special sentence. Instead, the

general assembly made the special sentence mandatory at the time of sentencing

and vested the board of parole with the discretion to determine ex post when a

sex offender no longer presents a risk and should be discharged from the special sentence. See Iowa Code § 901.5(12); id. §§ 903B.1, .2; id. § 906.15.

Thus, while the district court is required to pronounce and impose the special sentence at the time of sentencing, the special sentence is separate and distinct from the sentence of incarceration and serves a different purpose. The

of

Wade, 757 N.W.2d at 628. The

Id. As Justices

Mansfield and Waterman recently explained, the special sentence must be

In re Det. of Wygle, 910 N.W.2d 599, 620 (Iowa 2018) (Mansfield, J., dissenting, joined by Waterman and Zager, JJ.).

Administration of the special sentence is textually committed to the discretion of the other branches of government. Iowa Code sections 903B.1 and

custody

906 governs

parole and work releases. Sections 903B.1 and 903B.2 further provide that it is

the Both sections further provide that the terms and conditions of the special sentence shall be governed determined by an administrative law judge and not a court. See Iowa Code § 908.6. Finally, the Code provides that the board of parole shall determine when an offender is discharged from the special sentence. See id. § 906.15. Other than requiring its imposition at the time of sentencing, no statutory provision allows

the judicial branch to be involved in any way with the parole sentence.

The majority ignores this and now interjects itself into and interferes with

the b

public-safety purpose of the statute. The legislature has determined that sex

offender risk assessments should be made with as much information as possible.

To advance that policy, the legislature has determined that the sentencing court

must impose the special sentence at the time of sentencing without making an

ex ante

passed and the sex offender has discharged the sentence for the underlying

offense, the sex offender then commences the special sentence. At that time, the

board of parole can begin extended monitoring of the offender and can make an

ex post determination of risk based on the most recent information regarding the

offender.

To illustrate the problem, just consider the facts of this case. The district

court ordered the defendant to serve four concurrent terms of incarceration not to exceed twenty-five years each, suspended those sentences, and placed the

defendant on probation for five years. The district court then imposed the special

sentence as required by section n

and then under the supervision of the Iowa department of corrections until such

time as the board of parole determines the defendant no longer poses a risk to

the public and should thus be discharged from the special sentence. The board

tion would be based on the most recent and relevant

information regarding the risk posed.

supposed to make a speculative determination on whether the defendant should

be subject to the special sentence when he discharges probation five years from

and forces the district court to make the assessment based on speculation about

e years in the future.

Consider a different hypothetical. What if the district court had not

been sentenced to an indeterminate term of incarceration not to exceed twenty-

five years. What sense does it make to ask the sentencing court to exercise its

discretion at the time of sentencing? Can the district court make a

nonspeculative determination on whether Hess should serve a special sentence

that does not commence until he is released from prison perhaps twenty-five

years in the future? No, which is presumably why the legislature did not grant the district court the discretion to make the speculative determination the

majority now orders. Instead, the statute requires the district court to impose

the special sentence and allows the board of parole to look at more relevant

§ 903B.1. 8

IV.

Because of the high risk to reoffend, the legislature has concluded that sex

completion of the sentence imposed under any applicable criminal sentencing

903B.1. The

legislature concluded that

ive of protecting

Wade, 757 N.W.2d at 628. and supervise the special sentence. Id. The majority has undermined the scheme

and 8

The majority raises a concern regarding the application of the statute to deferred-sentence cases. Section 903B.1 applies only where there has been a conviction for the underlying offense, so perhaps the failure to enter judgment or sentence may never trigger the special sentence. B is not necessary here because the issue is not before us. The question presented in this appeal is whether the district court can suspend the special sentence after imposing judgment and sentence for the underlying offense and thereby trigger the special sentence under section 903B.1. parole. This is contrary to the text of the statute and relevant precedents and is

wholly unnecessary. I respectfully dissent.

Oxley and May, JJ., join this concurrence in part and dissent in part.