

IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-0779

NATHAN DANIEL OLSEN,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR SCOTT COUNTY
THE HONORABLE THOMAS G. REIDEL, JUDGE

APPELLEE'S BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The Privileges and Immunities Clause Does Not Prohibit the State from Permitting Sex Offenders to Seek Modification Under Chapter 692A. Because He is Not a Resident of Iowa and is Neither Employed Nor a Student in Iowa, Olsen is Not Required to Register Under Chapter 692A and Cannot Apply for Modification.

Authorities

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II. Even if the Statute Did Apply to Him as an Illinois Resident, Olsen is Not Eligible for Modification Because Five Years Have Not Passed From the Date of Commencement of His Requirement to Register.

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ROUTING STATEMENT

Applicant-Appellant Nathan Daniel Olsen appeals from the denial of his application to modify sex offender registration requirements under Iowa Code section 692A.128. He seeks retention by this Court on two grounds. First, because his appeal challenges the constitutionality of Iowa Code section 692A.128 to the extent that it limits who may file an application for modification to sex offenders who have a “principal residence” in Iowa as defined in Iowa Code section 692A.101(20). *See* Iowa R. App. P. 6.1101(2)(a). Second, he argues that whether a sex offender who does not have a “principal residence” in Iowa can file an application for modification is an issue of first impression. *See* Iowa R. App. P. 6.1101(2)(c). The State disagrees that these issues merit retention.

The question is one of simple statutory interpretation. Olsen cannot apply for modification under section 692A.128 because he is not a “sex offender” for purposes of that statute. The sex offender registry chapter, Iowa Code Chapter 692A, defines “sex offender” as “a person who is required to be registered under this chapter.” Iowa Code § 692A.101(26). Section 692A.103 provides that a person convicted of a sex offense must register “as provided in this chapter if

the offender resides, is employed, or attends school in this state.”

Because Olsen does not reside in Iowa, is not employed here, and does not attend school here, he is not required to register under chapter 692A. As will be explained in the State’s argument, nothing in chapter 692A permits an out-of-state resident to seek modification of the requirements of that chapter prior to establishing a residence, employment, or attendance as a student in Iowa.

But even if it did, Olsen is not eligible for modification for a different reason. He does not meet the threshold requirement set forth in Iowa Code section 692A.128(2)(a). That section requires that the date of the “commencement of the requirement to register” must have occurred at least five years prior to the date of the filing of the application. As will be explained as part of the State’s argument, Olsen filed his application less than five years later than the date of the commencement of the requirement to register. The State raised this issue in the district court and, while the district court did not explicitly address the argument, Iowa’s appellate courts “may uphold the ruling on any ground raised in the district court.” *Olson v. Sumpter*, 728 N.W.2d 844, 850 (Iowa 2007).

It is worth noting that Olsen resisted the State’s argument on this point on the ground that the “commencement of the requirement to register” refers to the initial period of Olsen’s registration rather than the commencement of the additional ten years pursuant to Iowa Code section 692A.106(4). This also appears to be an issue of first impression. But it is not a “substantial” issue of first impression because the statute was amended effective July 1, 2022. *See* Acts 2022 (89 G.A.) ch. 1063, S.F. 2363, § 1, eff. July 1, 2022. For offenders whose requirement to register after July 1, 2022, the legislature changed the time calculation from the “date of the commencement of the requirement to register” to the period of time that “has elapsed since the offender's initial registration.” *Id.* Transfer to the Court of Appeals is appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

This is an appeal from the denial of Olsen’s application to modify sex offender registration requirements. He argues that restricting the application process to sex offenders who have a principal residence in Iowa as defined in the statute violates the

privileges and immunities clauses of the state and federal constitutions.

Course of Proceedings

The State accepts the course of proceedings as set forth in Olsen's brief as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

Olsen was placed on probation for a sexual assault in Wisconsin in 2009. *See* Petitioner's Exh. 12; Amend. App. 48. A comparable offense in Iowa requires registration as a Tier III offender. *Id.* Olsen moved to Iowa and transferred his probation here. Petitioner's Exh. 11; Amend. App. 43-46. He was convicted of a violation of the requirements of the registry in 2017 in Muscatine. *Id.* After that, he moved to Illinois, where he lives now. *Id.* Olsen is not required to register as a sex offender in Illinois. *Id.*

ARGUMENT

I. The Privileges and Immunities Clause Does Not Prohibit the State from Permitting Sex Offenders to Seek Modification Under Chapter 692A. Because He is Not a Resident of Iowa and is Neither Employed Nor a Student in Iowa, Olsen is Not Required to Register Under Chapter 692A and Cannot Apply for Modification.

Preservation of Error

The State does not contest error preservation.

Standard of Review

The determination of statutory eligibility for modification is reviewed for errors at law. *Fortune v. State*, 957 N.W.2d 696, 705 (Iowa 2021). Constitutional challenges to a statute are reviewed de novo. *Wright v. Iowa Dep't of Corr.*, 747 N.W.2d 213, 216 (Iowa 2008).

Merits

The district court denied Olsen's application because it concluded that it did not have subject matter jurisdiction over an application filed by an out-of-state resident who does not work or study in Iowa. Ruling P.6-7; Amend. App. 30-31. It rejected his challenge to the statute under the privileges and immunities clause because, as it explained, Olsen's "out-of-state residency is not the thing preventing him from taking advantage of the statute. It is the

fact that Iowa is currently exercising no jurisdiction over Olsen.”

Ruling P.6; Amend. App. 30. Both rulings are correct.

A. Olsen cannot apply for modification because the statute does not apply to out-of-state residents who do not work or study in Iowa.

Iowa Code section 692A.128 permits “[a] sex offender” to file an application in the Iowa district court to modify the registration requirements applicable to him under chapter 692A. But the provision does not apply to non-residents. The statute defines “sex offender” as “a person who is required to be registered under this chapter.” Iowa Code § 692A.101(26). Section 692A.103 provides that a person convicted of a sex offense must register “as provided in this chapter if the offender resides, is employed, or attends school in this state.” Because Olsen does not reside in Iowa, is not employed here, and does not attend school here, he is not required to register under chapter 692A. As a result, he cannot seek to modify the requirements of that chapter.

Efforts to introduce some procedure for non-residents to apply to modify have been unsuccessful in the past. *See, e.g., United States v. Laveke*, 38 F.4th 662, 666 (8th Cir. 2022) (“In 2009, Iowa State Senator Herman Quirmbach agreed to try and help Laveke, who was

then residing in Arizona. Senator Quirnbach repeatedly introduced bills to amend the law to allow out-of-state offenders the same opportunity as in-state offenders to petition for removal from the Iowa registry; however, his efforts were unsuccessful.”); *see also* S.F. 102, 87th G.A., (Ia. 2017) (A bill that would add after “principal residence” in then-section 692A.128(3), “or in the county where the conviction occurred if the sex offender no longer resides in this state and has been placed on inactive status.”).

The district court correctly ruled that it lacked subject matter jurisdiction—that is, that the law does not authorize it to entertain an application to modify the requirements of chapter 692A from a person to whom those requirements do not apply.

B. The privileges and immunities clauses do not require Iowa to permit non-residents to apply to modify requirements under chapter 692A.

The privileges and immunities clause of the United States Constitution provides, “[t]he Citizens of each State [are] entitled to all Privileges and Immunities of Citizens in the several States.” U.S. Const., Art. IV, § 2, cl. 1. The state constitution provides, “the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong

to all citizens.” Iowa Const. Art. 1, § 6. The United States Supreme Court has explained that, “[t]he object of the Privileges and Immunities Clause is to ‘strongly ... constitute the citizens of the United States [as] one people,’ by ‘plac[ing] the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned.’” *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287, 296 (1998) (quoting *Paul v. Virginia*, 8 Wall. 168, 180 (1869)).

The privileges and immunities clause does not mean, however, that, “state citizenship or residency may never be used by a State to distinguish among persons.” *Baldwin v. Fish and Game Comm'n of Mont.*, 436 U.S. 371, 383 (1978). “Nor must a State always apply all its laws or all its services equally to anyone, resident or nonresident, who may request it so to do.” *Id.* Rather, the clause protects only those privileges and immunities that are “fundamental.” *Id.*

Olsen claims that because he cannot file an application to modify the requirements of the sex offender registration chapter he is denied the fundamental right of “access to the courts.” While “access to the courts” is a fundamental privilege of a citizen in a general sense, it does not entitle Olsen to the relief he seeks. The United

States Supreme Court has explained, “the constitutional requirement is satisfied if the non-resident is given access to the courts of the State upon terms which in themselves are reasonable and adequate for the enforcing of any rights he may have, even though they may not be technically and precisely the same in extent as those accorded to resident citizens.” *Canadian Northern R. Co. v. Eggen*, 252 U.S. 553, 562 (1920). In this case, there is no “right” for Olsen to enforce with respect to the modification provision because the State is not applying any of the provisions of chapter 692A to him while he remains a non-resident.

Olsen cites *McBurney v. Young*, 569 U.S. 221 (2013); *Democko v. Iowa Dep’t of Nat. Res.*, 840 N.W.2d 281 (Iowa 2013); and *Nitsos v. Employment Appeal Board*, No. 11-1442, 2012 WL 2122493 (Iowa Ct. App. June 13, 2012). They do not aid him. All three cases involve challenges to state laws that either discriminated against non-residents or preferred residents in some form. All three were held to be reasonable and compliant with the privileges and immunities clause. *McBurney* held that it was constitutional for Virginia to prohibit non-residents from using its sunshine law, *Democko* held that it was constitutional for Iowa to grant special hunting privileges

to resident landowners, and *Nitsos* held that it was constitutional to require all non-residents to file judicial review actions in Polk County.

Statutes are “cloaked with a presumption of constitutionality.” *State v. Hernandez-Lopez*, 639 N.W.2d 226, 233 (Iowa 2002). “The challenger bears a heavy burden, because it must prove the unconstitutionality beyond a reasonable doubt.” *Id.* Olsen has not met his burden in this case. He has made no showing that restricting modification of the sex offender registration requirements to those who are actually subject to them—residents and non-residents who are employed or study in the state—is unreasonable. His claim that his desire to move to Iowa and establish residence here is frustrated by having to comply with the requirements for even a few months while he goes through the modification procedure is insufficient to carry his heavy burden. *See Nitsos*, 2012 WL 2122493, at *4.

The authorities that Olsen relies on actually show that the statutory scheme he challenges is reasonable and supported by legitimate state interests. The State does not require—indeed could not require—a sex offender to register who is not a resident, employee, or student in the State. Requiring Olsen to establish one of those connections before he applies for modification does not impose

any burden that anyone who is required to register under chapter 692A does not already carry. And the State could legitimately conclude that it does not want to task the district courts with determining whether to modify an as-yet-nonexistent requirement for a sex offender who is merely contemplating coming to Iowa.

II. Even if the Statute Did Apply to Him as an Illinois Resident, Olsen is Not Eligible for Modification Because Five Years Have Not Passed From the Date of Commencement of His Requirement to Register.

Preservation of Error

The State argued that Olsen did not meet the threshold requirements for modification because five years had not passed from the commencement of his requirement to register in an amended answer and at the hearing on Olsen’s application. Amended Answer ¶ 16c; Amend. App. 17; Hearing Tr. P.6 L.12 – P.7 L.19. While the district court did not explicitly address this argument in its ruling, it did say that “Olsen meets all the requirements to seek modification” other than the residency requirement. Error is preserved.

Standard of Review

“Our standard of review for rulings on questions of statutory interpretation is for correction of errors at law.” *State v. Watkins*, 914 N.W.2d 827, 837 (Iowa 2018)

Merits

Modification is not available for a Tier III offender until five years have passed from the “date of the commencement of the requirement to register.” Iowa Code § 692A.128(2)(a). Olsen is a Tier III offender. Petitioner’s Exh. 12; Amend. App. 48. He is required to register until January 9, 2030. Petitioner’s Exh. 12; Amend. App. 48. Olsen was initially required to register in Iowa in 2009. Petitioner’s Exh. 12; Amend. App. 48. That requirement was for ten years.

In February of 2017, Olsen was convicted of a violation of the registry requirements and spent four months in prison. Petitioner’s Exh. 11; Amend. App. 43-46. As a result, Olsen was required to register for an additional ten years, “commencing from the date the offender’s registration would have expired” but for the violation. Iowa Code 692A.106(4). With the tolled time he spent in prison in 2017, Olsen’s obligation to register would have expired on or about January 8, 2020. His current requirement to register commenced on January 9, 2020. Petitioner’s Exh. 12; Amend. App. 48. He is not eligible for modification until January 10, 2025.

While Olsen resisted this argument in the district court, his advocacy in his appellate brief supports the point. He says that in his

motion for reconsideration, he pointed out that, “the 10 year initial registration that he had from the Wisconsin conviction had expired. Any continued obligation to register in Iowa was based **solely** on the Iowa conviction from Muscatine County for the registration violation in 2017.” Appellant’s Br. P.13 (emphasis added). Later, he argues much the same thing. “Olsen’s obligation based on the Wisconsin conviction was only 10 years. That has now expired. **But for** the Muscatine County registration violation, Olsen would no longer have an obligation in Iowa.” Appellant’s Br. P.31 (emphasis added). And, “It logically follows that Olsen’s **current registration obligation** in Iowa is the **direct result** of an Iowa conviction.” Appellant’s Br. P.31 (emphasis added). Finally, “[h]is obligation to register is **directly related** to an Iowa conviction—the 2017 conviction in Muscatine.” Appellant’s Br. P.33 (emphasis added).

According to the plain language of the statute, Olsen’s current registration obligation “commenced” on or about January 8, 2020. *See* Iowa Code § 692A.106(4) (“A sex offender who is convicted of violating any of the requirements of this chapter shall register for an additional ten years, commencing from the date the offender's registration would have expired under subsection 1”).

In the district court, Olsen cited a ruling from a Scott County district court holding that the five-year minimum does not restart during the second ten-year registration requirement under Iowa Code section 692A.106(4). *See* Ruling, *In re Doup*, Scott County No. CVCV294536. But that ruling got it wrong. It held:

Because the Court finds that Iowa Code § 692A.106(4) *extends* one's time on the registry, rather than impose a new term to begin anew after the previous requirement ends, the Court also finds that Iowa Code § 692.128(2)(a) [sic] creates a mandatory minimum term of either two or five years (five years for this Petitioner) to be spent on the registry that is measured from the beginning of the requirement to register. There is only one beginning to the requirement to register. A registrant may violate the terms of the registry and Iowa Code § 692.1106(4) [sic] may impose ten extra years, but the requirement to register as a whole still has one beginning. It does not begin, and then after ten years, begin again.

Ruling, *In re Doup*, Scott County No. CVCV294536.

The problem with the district court's reasoning is that the statute says the opposite. Iowa Code section 692A.128(2)(a), the modification provision, provides a five-year minimum from "the date of the commencement" of the requirement to register. The initial period of registration, according to section 692A.103, requires offenders to register "commencing from" the date of probation or

release from incarceration. The additional ten years following a violation of the requirements “commenc[es] from the date” the initial period would have expired. Iowa Code § 692A.106(4). The word “commence” means “begin.” See <https://www.merriam-webster.com/dictionary/commence>. The requirement to register quite literally does “begin again” after the initial ten years would have expired.

The 2022 modification of Iowa Code section 692A.128 shows the difference. See Acts 2022 (89 G.A.) ch. 1063, S.F. 2363, § 1, eff. July 1, 2022. The change took effect on July 1, 2022. The current version of the statute remains unchanged for offenders whose requirement to register “commenced” prior to July 1, 2022. But for offenders whose requirement to register commenced on or after July 1, 2022, the minimum period must have “elapsed since the offender’s **initial registration.**” Iowa Code § 692A.128(3) (2023). Swapping out the “date of commencement” for the date of “initial registration” suggests, as do the other relevant statutory provisions, that an offender covered by section 692A.128(2)(a) may have more than one “date of commencement” of his requirement to register. Because he is

not eligible for modification until 2025, the district court's ruling should be affirmed.

CONCLUSION

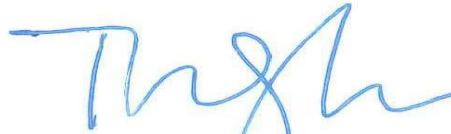
For the foregoing reasons, the denial of Olsen's application for modification should be affirmed.

REQUEST FOR NONORAL SUBMISSION

Nonoral submission is appropriate for this case.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **3,043** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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