MEMORANDUM DECISION

APPELLANT PRO SE

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IN THE COURT OF APPEALS OF INDIANA

Kevin Martin,
Appellant-Plaintiff,

v.

Sgt. Alexander Shaw,
Appellee-Defendant.

December 19, 2022

Court of Appeals Case No.
22A-PL-1336

Appeal from the
Madison Circuit Court

The Honorable
Andrew Hopper, Judge

Trial Court Cause No.
48C03-2104-PL-45

Foley, Judge.

[1] After Sergeant Alexander Shaw ("Sergeant Shaw") sprayed Kevin Martin ("Martin")—an inmate at Pendleton Correctional Facility—with mace, Martin

filed a lawsuit under 42 U.S.C. § 1983. Utilizing the screening statute,[1] the trial court dismissed the complaint on all counts. We conclude—and the State concedes—that the trial court erred in dismissing Martin's Eighth Amendment claim. Martin fails to adequately articulate an argument for his Fourteenth Amendment claim, however, and we find that he has therefore waived that argument on appeal. Accordingly, we affirm in part, reverse in part, and remand for further proceedings.

Facts and Procedural History

[2] Per our standard of review at this threshold stage of the litigation, we accept the following facts, alleged by Martin, as true: on approximately January 14, 2021, Martin was imprisoned at the Pendleton Correctional Facility. Sergeant Shaw sprayed Martin in the eyes with "o/c."[2] Appellant's Br. p. 6. It is unclear what motivated Sergeant Shaw, though Martin alleges that he was sprayed "for no reason." *Id*. Prison staff did not provide Martin with any medical attention. At that time, both the electricity and water were turned off in Martin's cell for a period of six days, ostensibly as a punitive result of a corrections officer being assaulted in the segregation unit. Martin's bedsheets and clothing were

[1] The statute governs claims by an "offender" which may not proceed under certain circumstances. Ind. Code § 34-58-1-2.

[2] Here Martin refers to oleoresin capsicum spray, a non-lethal chemical weapon commonly employed by law enforcement and correctional officers, colloquially referred to as pepper spray or mace.

removed from his cell and not replaced. Martin filed an unsuccessful internal grievance in the prison.

[3] On April 15, 2021, Martin filed a suit in the Madison Circuit Court pursuant to 42 U.S.C. § 1983. Martin alleged that Sergeant Shaw's conduct was a result of deliberate indifference and rose to the level of cruel and unusual punishment under the Eighth Amendment to the United States Constitution. Martin also raised a Fourteenth Amendment due process claim.

[4] On June 8, 2021, Sergeant Shaw filed a motion requesting that the trial court screen Martin's complaint pursuant to Indiana Code section 34-58-1-2. After a hearing, the trial court granted the motion and dismissed Martin's complaint on May 20, 2022. Specifically, the trial court found that Martin's complaint failed to state a claim upon which relief could be granted. Martin now appeals.

Discussion and Decision

[5] Martin contends that the trial court erred by dismissing his complaint. He also proceeds pro se, and we therefore reiterate that "a pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented." *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). "This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so." *Picket Fence Prop. Co. v. Davis*, 109 N.E.3d 1021, 1029 (Ind. Ct. App. 2018) (citing *Basic v. Amouri*, 58 N.E.3d 980, 983–84 (Ind. Ct. App. 2016)). Although we prefer to decide cases on their merits, arguments are

waived where an appellant's noncompliance with the rules of appellate procedure is so substantial it impedes our appellate consideration of the errors. *Id.*

[6] Here, the trial court disposed of all Martin's claims under Indiana's Screening Statute. "Indiana's Screening Statute requires a trial court to assess complaints filed by offenders as soon as the complaints are received." *Wheeler v. State*, 180 N.E.3d 305, 307 (Ind. Ct. App. 2021) (citing Ind. Code § 34-58-1-2(a); *Zavodnik*, 17 N.E.3d at 264). "The purpose of the statute is to screen and prevent abusive and prolific offender litigation in our state." *Id*. at 307–08 (citing *Benson v. WANE-TV 15*, 106 N.E.3d 1055, 1056 (Ind. Ct. App. 2018)). An offender's claim may not proceed and is subject to dismissal if the trial court determines that it:

> (1) is frivolous;
>
> (2) is not a claim upon which relief may be granted; or
>
> (3) seeks monetary relief from a defendant who is immune from liability for such relief.

I.C. § 34-58-1-2(a). "If a trial court determines that a claim may not proceed, the statute requires that the trial court enter an order explaining why the claim may not proceed and stating if any of the offender's remaining claims may proceed." *Wheeler,* 180 N.E.3d at 308 (citing I.C. § 34-58-1-3).

[7] "We conduct a de novo review of a trial court's decision to dismiss a claim pursuant to the Screening Statute." *Id*. (citing *Smith v. Donahue*, 907 N.E.2d 553, 555 (Ind. Ct. App. 2009), *trans. denied*). "In conducting our review, we look only to the well-pleaded facts contained in the complaint or petition to determine whether it contains allegations concerning all the material elements necessary to sustain a recovery under some viable legal theory." *Id*. "We may affirm the trial court's dismissal on any theory or basis found in the record." *Id*. (citing *Smith v. Wal-Mart Stores E., LP*, 853 N.E.2d 478, 483 (Ind. Ct. App. 2006), *trans. denied*)).

I. Eighth Amendment

[8] We first note that the State concedes that the trial court erred in dismissing Martin's Eighth Amendment claim. We agree. As the State correctly notes:

> At this state [sic] of the litigation, Martin's complaint alleged sufficient facts to support a violation of deliberate indifference. Martin alleged that Shaw sprayed him with oc spray and then did not allow him to decontaminate himself or allow a medical provider to assist him. In addition, he alleged that Shaw forced him to stay in his cell where the oc spray had been sprayed without changing his linens or clothing. Due to Indiana's pleading standard, this is enough to state a deliberate indifference for failure to provide medical care claim.

Appellee's Br. p. 8.

[9] "The Eighth Amendment, which applies to the states through the Fourteenth Amendment, prohibits the infliction of cruel and unusual punishment and

manifests an intention to limit the power of those entrusted with the government's criminal-law function." *Smith v. Ind. Dep't of Corr.*, 871 N.E.2d 975, 987 (Ind. Ct. App. 2007) (citing *Whitley v. Albers*, 475 U.S. 312, 318 (1986). "After incarceration, only the unnecessary and wanton infliction of pain . . . constitutes cruel and unusual punishment forbidden by the Eighth Amendment." *Id*. (quoting *Ingraham v. Wright*, 430 U.S. 651, 670 (1977)) (cleaned up).

[10] "Indiana Trial Rule 8(A), Indiana's notice pleading provision, requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *City of Clinton v. Goldner*, 885 N.E.2d 67, 74 (Ind. Ct. App. 2008) (quoting *Trail v. Boys & Girls Clubs of Nw. Ind.*, 845 N.E.2d 130, 135 (Ind. 2006)). "Notice pleading merely requires pleading the operative facts so as to place the defendant on notice as to the evidence to be presented at trial." *Id*. (citing *Noblesville Redev. Comm'n v. Noblesville Assocs. Ltd. P'ship*, 674 N.E.2d 558, 563 (Ind. 1996)). "Therefore, under notice pleading, the issue of whether a complaint sufficiently pleads a certain claim turns on whether the opposing party has been sufficiently notified concerning the claim so as to be able to prepare to meet it." *Id*. (citing *Noblesville,* 674 N.E.2d at 563–64).

[11] Given the ease with which our pleadings standard is met, and the fact that Sergeant Shaw is alleged to have inflicted pain on Martin, apparently unprovoked, we find little difficulty in concluding that Martin has alleged the requisite operative facts. If his allegations are proven, he will have established that he suffered cruel and unusual punishment at the hands of the State under

the Eighth Amendment. The trial court was therefore in error when it ruled that Martin's Eighth Amendment arguments failed to comprise a claim upon which relief could be granted.

II. Fourteenth Amendment

[12] Martin next purports to raise a due process claim under the Fourteenth Amendment to the United States Constitution. Here, we note that Indiana Appellate Rule 46(A)(8)(a) requires that the argument section of a brief "contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . . ." We will not consider an assertion on appeal when there is no cogent argument supported by authority and there are no references to the record as required by the rules. *Id.* "'We will not become an advocate for a party or address arguments that are inappropriate or too poorly developed or expressed to be understood.'" *Picket Fence*, 109 N.E.3d at 1029 (quoting *Basic*, 58 N.E.3d at 984).

[13] We conclude here that Martin has waived his Due Process claim on appeal. Though he invokes the Fourteenth Amendment to the United States Constitution, he does not appear to have alleged anything in particular with respect to that amendment. He does not explain what process he feels was both lacking and due to him, and does not delineate any discernible deprivation of life, liberty, or property. We have exhausted all reasonable efforts to respond to Martin's Fourteenth Amendment claim on the merits, but are unable to do so.

[14] This is not the first time we have encountered similar deficiencies from Martin: "Martin has not provided a cogent argument, citation to relevant legal precedent, citation to pages in the record, or sufficient statement of facts and procedural history for us to consider his appeal. His brief is hand[-]written and barely legible in some areas." *Martin v. Hunt*, 130 N.E.3d 135, 137 (Ind. Ct. App. 2019). "Failure to present a cogent argument results in waiver of the issue on appeal." *Id*. (citing *Hollowell v. State*, 707 N.E.2d 1014, 1025 (Ind. Ct. App. 1999)).

[15] In fact, in the case at bar, Martin's briefing appears to contain only a single reference to the Fourteenth Amendment: "Shaw punish [sic] Martin for other inmate assault prison guard violation Martin due process within prison without fair procedures to see nurse . . . ." Appellants Br. p. 17. This is not an argument, let alone an argument supported by cogent reasoning and citations to authority. The argument is waived.[3]

[16] The trial court erred in dismissing Martin's Eighth Amendment claim. Accordingly, we reverse and remand for further proceedings on that claim. We affirm the trial court in all other respects.

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[3] To the extent that Martin makes any other arguments, or the trial court dismissed any other claims below, Martin similarly waives his arguments on appeal. The State notes that Martin appears to have raised constitutional arguments below regarding unnamed defendants. He is silent with respect to those arguments on appeal and thus surrenders them. *See, e.g.*, *Eastridge v. Est. of Rayles*, 177 N.E.3d 875, 881 (Ind. Ct. App. 2021) (failure to follow through on appeal with an issue raised below constitutes abandonment of that issue). To the extent that Martin mentions the Equal Protection clause in his brief, he has waived any arguments therein, having not mentioned equal protection in his complaint below. Issues may not be raised for the first time on appeal. *See, e.g., Pearman v. Stewart Title Guar. Co.,* 108 N.E.3d 342, 350 (Ind. Ct. App. 2018).

[17] Affirmed in part, reversed in part, and remanded.

Robb, J., and Mathias, J., concur.