IN THE COURT OF APPEALS OF IOWA

No. 3-044 / 11-1545
Filed March 13, 2013

IN RE THE DETENTION OF
CORY BLAKE WEST,
Respondent,

CORY BLAKE WEST,
Respondent-Appellant

Appeal from the Iowa District Court for Wapello County, Annette J. Scieszinski, Judge.

Cory West appeals following a jury's verdict finding him to be a sexually violent predator. **AFFIRMED.**

Cory Blake West, Cherokee, appellant pro se.

Michael H, Adams, Local Public Defender, and Thomas J. Gaul, Assistant Public Defender, Special Defense Unit, for appellant.

Thomas J. Miller, Attorney General, and John McCormally, Assistant Attorney General, for appellee State.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

Cory West appeals following a jury's verdict finding him to be a sexually violent predator, asserting the district court erred when it denied his motion to dismiss. Additionally, he asserts numerous claims pro se. We affirm.

***I. Background Facts and Proceedings*.**

Cory West has multiple convictions for sexual abuse. His most recent conviction occurred in 2008 following his guilty plea to assault with intent to commit sexual abuse, in violation of Iowa Code sections 708.1, 709.11, and 901A.2(2) (2005). West was sentenced to four years of incarceration, and in addition thereto, a special sentence was imposed pursuant to Iowa Code section 903B.2, committing West:

> to the custody of the Director of Iowa Adult Corrections for a period of time not to exceed ten years, with eligibility for parole as provided in chapter 906. The special sentence imposed under this section shall commence upon the completion of the [four] year sentence above, and the defendant shall begin the sentence under supervision as if on parole.

Shortly before West was due to be released from confinement at the Mt. Pleasant Correctional Facility, the State filed a petition alleging West was a sexually violent predator (SVP) within the meaning of Iowa Code chapter 229A (2009). Following a probable cause hearing, the court ordered West to be held pending trial.

During the pretrial proceedings, West filed a pro-se motion to dismiss. He asserted the special sentence under section 903B.2 required the State to release him to the community to serve out that sentence prior to the commencement of civil commitment proceedings. He further argued that the State should be barred

from proceeding with the SVP case because the parole board determination that he was eligible for parole created collateral and equitable estoppel. The district court denied the motion, finding "that none of that unsettled legal conundrum undermine[d] the court's jurisdiction and propriety of this chapter 229A proceeding going forward."

The trial proceeded forward. Exhibits were entered, and testimony was given, including the opinion of the State's expert, who opined West suffered from psychological disorders and was likely to commit future sex offenses. Conversely, West's expert opined West did not suffer from a mental abnormality and was not likely to commit future sex offenses. The jury returned a verdict on September 1, 2011, finding that West was a sexually violent predator.

West now appeals, arguing the district court erred in denying his motion to dismiss for reasons asserted therein. He also raises numerous claims pro se. This court reviews the district court's construction of a statute for correction of errors at law. *State v*. *Anderson*, 782 N.W.2d 155, 157 (Iowa 2010).

***II*. *Statutory Construction*.**

Iowa Code chapter 229A allows for the commitment of SVPs in order "to protect the public, to respect the needs of the victims of sexually violent offenses, and to encourage full, meaningful participation of sexually violent predators in treatment programs." Iowa Code § 229A.1. Under chapter 229A, a "sexually violent predator" is defined as "a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses, if not confined in a secure facility." *Id*. § 229A.2(11).

"The process to civilly confine a suspected SVP begins when the agency with jurisdiction over that individual gives written notice to the attorney general and a multidisciplinary team that a person currently confined may meet the definition of an SVP." *In re Det. of Mead*, 790 N.W.2d 104, 107-08 (Iowa 2010). The written notice must be provided prior to

> [t]he *anticipated discharge* of a person who has been convicted of a sexually violent offense from *total confinement*, *except that in the case of a person who is returned to prison for no more than ninety days as a result of revocation of parole*, written notice shall be given as soon as practicable following the person's readmission to prison.

Iowa Code § 229A.3(1)(a) (emphasis added).

West was sentenced to a ten-year special sentence pursuant to Iowa Code section 903B.2. That section provides:

> A person convicted of a misdemeanor or a class "D" felony offense under chapter 709 . . . 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 a period of ten years, with eligibility for parole as provided in chapter 906. . . . *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* . . . .

Id. § 903B.2 (emphasis added).

On appeal, West argues sections 229A.3 and 903B.2 are in conflict; essentially he asserts his special sentence is part of his underlying sentence, and the State cannot file its petition until that sentence is close to being discharged. He contends the language of section 229A.3(1)(a), "anticipated discharge[] of a person who has been convicted of a sexually violent offense" coupled with the later language "except that in the case of a person who is returned to prison for

no more than ninety days as a result of revocation of parole," indicates the legislature

> contemplated situations when a person would be serving a parole sentence but, if returned to prison, proceedings under Iowa Code [section] 229A could start. Clearly, the Iowa Legislature meant for someone to only be subject to Iowa Code [chapter] 229A if he had discharged his underlying sentence, including his special sentence under 903B.2 (or had the parole of his special sentence revoked).

We disagree.

In interpreting section 229A.3(1)(a), "our primary goal is to give effect to the intent of the legislature." *Anderson*, 782 N.W.2d at 158 (citation omitted).

> That intent is gleaned from the language of the statute as a whole, not from a particular part only. In determining what the legislature intended we are constrained to follow the express terms of the statute. When a statute is plain and its meaning clear, courts are not permitted to search for meaning beyond its express terms. In determining plain meaning, statutory words are presumed to be used in their ordinary and usual sense and with the meaning commonly attributable to them.
>
> If the language of a statute is ambiguous, the manifest intent of the legislature is sought and will prevail over the literal import of the words used. We also note the rule of statutory construction that penal statutes are to be strictly construed, with any doubt resolved against the State and in favor of the accused.

Id. (internal citations, quotation marks, and alterations omitted).

The language of Iowa Code section 229A.3(1)(a) is unambiguous. Viewing all of the language of that statute, West misses the important phrase "total confinement" in the sentence:

> Written notice shall be given no later than ninety days prior to . . . [t]he anticipated discharge of a person who has been convicted of a sexually violent offense from *total confinement*, except that in the case of a person who is returned to prison for no more than ninety days as a result of revocation of parole, written notice shall be given as soon as practicable following the person's readmission to prison.

Iowa Code § 229A.3(1)(a) (emphasis added). "Confine" is defined as "to keep in narrow quarters: IMPRISON." Webster's Third New International Dictionary 476 (2002). For legal purposes, the term "confinement" is defined in Black's Law Dictionary 318 (8th ed. 2004), as "[t]he act of imprisoning or restraining someone; the state of being imprisoned or restrained." The term "total" is defined as "[w]hole; not divided; full, complete." Black's Law Dictionary 1528 (8th ed. 2004). Putting the two words together, using their ordinary definitions, "total confinement" means complete or full imprisonment. Thus, it is the anticipation of being discharged from complete imprisonment, not discharge of a sentence, that gives rise to commencement of the SVP commitment process. This is consistent with the legislative findings made when chapter 229A was enacted. Iowa Code § 229A.1; *see In re Det. of Stenzel*, ___N.W.2d___, ___ 2013 WL 765319, at *8 (Iowa 2013) ("In other words, section 229.3 contemplates that the first steps in the SVP process that precede the filing of a petition may occur no later than ninety days before the discharge of a person from prison.").

Reading the two statutes together, section 903B.2 does not alter the section 229A.3(1)(a) requirement that the potential SVP must be close to discharging the total confinement portion of his sentence imposed for his conviction of a sexually violent offense. *See id.* §§ 229A.3(1)(a), 903B.2. Given the legislature's intent to protect the community by keeping SVPs in secure facilities,[1] it makes sense that such a petition should be filed *before* a potential

[1] SVPs who are "committed for control, care, and treatment by the department of human services pursuant to this chapter shall be kept in a secure facility." Iowa Code § 229A.7(7).

SVP is released into society, even if the anticipated release is subject to parole, probation, or any other kind of supervision. Accordingly we affirm on this issue.

III. Pro Se Claims.

West's pro-se brief does not comply with the rules of appellate procedure in numerous respects, including not addressing error preservation, standard of review, or citing to the pertinent parts of the record. Iowa R. App. P. 6.903(2)(g)(1), (2), (3). Furthermore, many of his statements are conclusory and unsupported by authority. "When a party, in an appellate brief, fails to state, argue, or cite to authority in support of an issue, the issue may be deemed waived." *State v. Adney*, 639 N.W.2d 246, 250 (Iowa Ct. App. 2001); *see also* Iowa R. App. P. 6.903(2)(g)(3) (stating the argument section shall include "[a]n argument containing the appellant's contentions and the reasons for them with citations to the authorities relied on and references to the pertinent parts of the record . . . [and f]ailure to cite authority in support of an issue may be deemed waiver of that issue"); *State v. McCright*, 569 N.W.2d 605, 607 (Iowa 1997); *Metro. Jacobson Dev. Venture v. Bd. of Review*, 476 N.W.2d 726, 729 (Iowa Ct. App. 1991). As noted above, random mention of an issue, without elaboration or supportive authority, is not sufficient to raise an issue for review. *Schreiber v. State*, 666 N.W.2d 127, 128 (Iowa 2003). We do not consider conclusory statements not supported by legal argument. *See, e.g.*, *Baker v. City of Iowa City*, 750 N.W.2d 93, 103 (Iowa 2008) (holding that a party's "conclusory contention" was waived where the party failed to support it with an argument and legal authorities); *State v. Piper*, 663 N.W.2d 894, 913-14 (Iowa 2003), (concluding the defendant waived consideration of the merits of his claims on

appeal which were presented as one-sentence conclusions without analysis), *overruled on other grounds by State v. Hanes*, 790 N.W.2d 545, 551 (Iowa 2010); *McCleeary v. Wirtz*, 222 N.W.2d 409, 417 (Iowa 1974) (holding that a "subject will not be considered" where a "random discussion" is not supported by a legal argument and citation to authority); *see also United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ("[a] skeletal 'argument', really nothing more than an assertion, does not preserve a claim. . . . Judges are not like pigs, hunting for truffles buried in briefs."). In the few instances where West does cite authority, he failed to preserve error on appeal because the district court did not rule on the issues. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.").

Pro se or not, parties to an appeal are expected to follow applicable rules. It has long been the rule that procedural rules apply equally to parties who are represented by counsel and to those who are not. *In re Estate of DeTar*, 572 N.W.2d 178, 180 (Iowa Ct. App. 1997) ("Substantial departures from appellate procedures cannot be permitted on the basis that a non-lawyer is handling [his of] her own appeal."). Pro se parties receive no preferential treatment. *Hays v. Hays*, 612 N.W.2d 817, 819 (Iowa Ct. App. 2000). "The law does not judge by two standards, one for lawyers and the other for lay persons. Rather, all are expected to act with equal competence. If lay persons choose to proceed pro se, they do so at their own risk." *Metro. Jacobson Dev. Venture*, 476 N.W.2d at 729. Although this may seem harsh to a pro se litigant, it is justified by the notion that appellate judges must not be cast in the role of advocates for a party who fails to

comply with court rules and inadequately presents an appeal. *See Piper*, 663 N.W.2d at 913-14.

For the above reasons, we do not consider West's pro se arguments. To set forth those arguments here would serve no useful purpose.

IV. Conclusion.

We find no merit in West's argument that a special-sentence imposed pursuant to Iowa Code section 903B.2 requires the State to wait until a potential SVP has discharged the special-sentence portion of his sentence. The legislative intent of Iowa Code chapter 229A, and the unambiguous language of section 229A.3(1)(a), require an SVP petition be filed prior to a potential SVP's discharge of the "total confinement" portion of his sentence. Additionally, we find West's pro se arguments were not preserved and waived for numerous reasons, and we therefore do not consider those arguments. Accordingly, we affirm the district court's ruling denying West's motion to dismiss, and we affirm the jury's verdict finding West was an SVP.

AFFIRMED.