IN THE COURT OF APPEALS OF IOWA

No. 9-532 / 08-1283
Filed August 6, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LANCE GENE LANGSTRAAT,
Defendant-Appellant.

Appeal from the Iowa District Court for Mahaska County, Richard J. Vogel, Judge.

Defendant appeals his conviction for sexual abuse in the third degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth Reynoldson, Assistant Attorney General, Rose Anne Mefford, County Attorney, and Misty White-Reiner, Assistant County Attorney, for appellee.

Considered by Potterfield, P.J., and Doyle, J. and Schechtman, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

SCHECHTMAN, S.J.

Lance Langstraat was found guilty by a trial jury of the offense of sexual abuse in the third degree, in violation of Iowa Code section 709.4(1) (2007), a class "C" felony. He was sentenced to serve an indeterminate term of imprisonment not to exceed ten years. The sentencing court further imposed a special sentence of lifetime parole, pursuant to Iowa Code section 903B.1.[1]

Langstraat contends he was deprived of effective assistance of counsel for his counsel's failure to challenge the constitutionality of that special sentence, when imposed. We find no constitutional infractions and affirm.

I. Scope of Review

The court reviews a challenge to the constitutionality of a statute de novo. *State v. Keene,* 629 N.W.2d 360, 363 (Iowa 2001). The challenge must be proven beyond a reasonable doubt. *Id.* at 364. The challenge must refute every reasonable basis that exists to support the statute's constitutionality. *Id*. An

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[1] Section 903B.1 provides:

> A person convicted of a class "C" felony or greater offense under chapter 709, or a class "C" felony under section 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 person's life, 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. 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 chapter 908, and rules adopted under those chapters for persons on parole. 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 "A" sentence for purposes of calculating earned time under section 903A.2.

ineffective assistance of counsel claim serves as an exception to any lack of error preservation. *State v. Carter,* 582 N.W.2d 164, 165 (Iowa 1998).

II. Ineffective Assistance of Counsel

These claims have their origin in the Sixth Amendment to the United States Constitution. A defendant must prove by a preponderance of evidence (1) counsel's failure to perform an essential duty; and (2) prejudice resulted. *State v. Polly,* 657 N.W.2d 462, 465 (Iowa 2003). Counsel is presumed to have performed competently. *State v. Westeen,* 591 N.W.2d 203, 210 (Iowa 1999). Though such claims are ordinarily reserved for postconviction proceedings, the record herein is deemed fully adequate to address it on direct appeal. *See id.*

III. Cruel and Unusual Punishment

Our nation's Constitution prohibits "cruel and unusual" punishment, applicable to the states by the Fourteenth Amendment. *State v. Phillips,* 610 N.W.2d 840, 843 (Iowa 2000) (citing U.S. Const. amend. VIII). Its terms emanate from the perception that punishment should be graduated and be proportional to the underlying offense. *Weems v. United States,* 217 U.S. 349, 367, 30 S. Ct. 544, 549, 54 L. Ed. 793, 798 (1910).

We start our analysis by recognizing our supreme court has addressed this issue in *State v. Wade,* 757 N.W.2d 618, 623-24 (Iowa 2008). Though *Wade* involved the constitutionality of Iowa Code section 903B.2, the latter section mirrors the provisions of 903B.1, with little exception, and was enacted as a part

of the same legislative act.[2] Although section 903B.1 provides for a life-long special sentence for more serious offenses than section 903B.2, Langstraat does not base this argument on the length of the sentence.

The analysis in *Wade* measured "the harshness of the penalty against the gravity of the offense." *Id*. at 623 (citing *State v. Seering,* 701 N.W.2d 655, 670 (Iowa 2005)). Its analysis "is undertaken objectively without considering the individualized circumstances surrounding the defendant or the victim."[3] *Id.* at 624 (quoting *State v. Musser*, 721 N.W.2d 734, 749 (Iowa 2006)). Rather, we look at the harm the statute was designed to prevent or minimize—recidivism by convicted sex offenders.

While acknowledging that *Wade* has determined the special sentence to not be disproportionate punishment, Langstraat asserts that when viewed "in tandem" with the additional restrictions of registry and residency on sex offenders imposed by chapter 692A, its imposition ripens into cruel and unusual treatment. Likewise, he contends its graduated sentencing scheme, in installment form, after a parole violation, does not allow for an end, which fosters continual, interminable anxiety, which rises to cruel and unusual punishment.

The risk of recidivism posed by sex offenders is "frightening and high." *Seering,* 701 N.W.2d at 665 (quoting *Smith v. Doe,* 538 U.S. 84, 103, 123 S. Ct. 1140, 1153, 155 L. Ed. 2d 164, 184 (2003)). The sentence, and other

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[2] Section 903B.1 references class "B" and "C" sex offenders, whereas section 903B.2 applies to class "D" felonies and misdemeanors. Also, the latter imposes only a ten-year extended sentence.

[3] Accordingly, the underlying facts of the subject offense have been omitted from this ruling.

accompanying restrictions, when measured against the gravity of this non-consensual assaultive offense, is not disproportional. Chapter 692A is a remedial statute, not punitive. *State v. Pickens,* 558 N.W.2d 396, 400 (Iowa 1997). Its imposition is to promote public safety and, though unpleasant, it is not punishment. Its provisions, when stacked upon the special sentence, do not violate the Eighth Amendment.

The subject statute commits any offender to the custody of the department of corrections upon completion of the original sentence, with the special sentence to "begin under supervision as if on parole." Iowa Code § 903B.1. Any imprisonment will not follow unless Langstraat violates the terms of his parole. Iowa Code section 903B.1 is not grossly disproportionate to the act of committing the crime of sexual abuse in the third degree ("done by force or against the will of the other person"), and then arguably, at some time, violating the terms of his release and parole. It is not cruel and unusual punishment, but legislative caution. As this constitutional challenge lacks merit, it does not support the claim of ineffective counsel.

IV. Substantive Due Process

The case of *Wade,* 757 N.W.2d at 623-27, did not contain a substantive due process challenge, though it did address a claim of denial of equal protection. Each appears in the Fourteenth Amendment.[4] The sphere of their respective protections overlap and are customarily considered together,

[4] "[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of its laws." U.S. Const. amend. XIV.

nevertheless, they are not coterminous. *Truax v. Corrigan*, 257 U.S. 312, 332, 42 S. Ct. 124, 129, 66 L.Ed. 254, 263 (1921). The equality clause, unlike due process, does not appear in the Fifth Amendment and does not apply to federal legislation.[5] *Id.* Due process, under the Fourteenth Amendment, advocates fairness, irrespective of the manner other individuals may be treated, whereas equal protection emphasizes disparity in treatment. *Id*. In *Wade* the court determined the imposition of the special sentence upon all sex offenders, misdemeanants and felons, discredited the equal protection argument of different treatment of similarly situated individuals. *Wade*, 757 N.W.2d at 625. *Wade* does assist to corroborate our finding of fairness of the subject statute.

Langstraat contends that Iowa Code section 903B.1 infringes upon his fundamental right to liberty, privacy, and freedom from government restraint, recognized by the Fourteenth Amendment to the United States Constitution and article II, section 9 of the Iowa Constitution. The federal and state Due Process Clauses are almost identical in scope, import, and purpose. *State v. Hernandez-Lopez,* 639 N.W.2d 226, 237 (Iowa 2002). Substantive due process "prevents the government from interfering with rights implicit in the concept of ordered liberty." *Seering*, 701 N.W.2d at 662 (citations omitted).

The first step in our due process analysis is to determine whether the asserted right is fundamental. *Hernandez-Lopez*, 639 N.W.2d at 238. As an

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[5] The United States Supreme Court has interpreted the Due Process Clause of the Fifth Amendment to test federal classifications, under the same standard of review. *Bolling v. Sharpe*, 347 U.S. 497, 499, 74 S. Ct. 694, 695, 98 L. Ed. 2d 884, 886 (1954). The concepts of equal protection and due process both stem from "an American ideal of fairness." *Id.*

alternative, if we conclude the asserted right is not fundamental, the statute must merely survive a rational basis test. *Id*.

Langstraat's challenge is directed to the extended parole following his incarceration. It is during this contemplated time as a parolee that he contends his fundamental right to liberty and freedom will be impinged. The question distills down into whether a defendant possesses a fundamental right to be free of punishment after release from imprisonment.

> [P]arolees have fewer expectations of privacy than probationers, because parole is more akin to imprisonment than probation is to imprisonment. . . . The essence of parole is release from prison, before the completion of sentence, on the condition that the prisoner abides by certain rules during the balance of the sentence.

Samson v. California, 547 U.S. 843, 850, 126 S. Ct. 2193, 2198, 165 L. Ed. 2d 250, 258 (2006) (internal quotations and citations omitted).

Langstraat argues that this special sentence effectively results in a lifetime sentence. However, by its terms, it's subject to the provisions of chapter 906 of the Iowa Code. Iowa Code section 906.15 provides, in part, "If a person has been sentenced to a special sentence under section 903B.1 or 903B.2, the person may be discharged early from the sentence in the same manner as any other person on parole." Early discharge "shall terminate the person's sentence".[6] Iowa Code § 906.15. This lifetime assertion fails. The extent and severity of the special sentence is dependent upon the conduct of the parolee, which is not adverse to his liberty protections.

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[6] Early discharge is not available when the victim is a child, fourteen or less. Iowa Code § 906.15. The subject victim was sixteen.

We conclude that Langstraat, a convicted felon, when a parolee, as contemplated by the special sentence, has no fundamental right to freedom while under the conditions imposed upon his parole and conviction. Those interests are entitled to only rational basis review. "To withstand rational basis review, there must be a reasonable fit between the government and the means utilized to advance that interest." *Hernandez-Lopez,* 639 N.W.2d at 238.

Wade recognized "sex offenders present a special problem and danger to society." *Wade*, 757 N.W.2d at 626. Our court in *In re Detention of Morrow,* 616 N.W.2d 544, 549 (Iowa 2000), concluded, "[t]he legislature is free to single out sexually violent predators from other violent offenders." "The particularly devastating effects of sexual crimes on victims . . . provide a rational basis for the classification." *Id.* The State has a strong interest in providing protection for its citizens from sex crimes. *State v. Iowa Dist. Ct.,* 508 N.W.2d 692, 694 (Iowa 1993); *see Seering*, 701 N.W.2d at 665 ("[T]he risk of recidivism posed by sex offenders is frightening and high." (citation omitted)). One neighboring state has professed that "[t]he legislature's assumptions about recidivism may be erroneous on a rational basis review, but they are arguably correct and that is sufficient to protect the legislative choice from constitutional challenge." *State v. Radke,* 657 N.W.2d 66, 75 n. 38 (Wisc. 2003).

We conclude there is a "reasonable fit" between the government's interest in preventing sex offenders from reoffending and the enactment of this special parole mandate. As a result there is a rational basis for the subject statute.

Therefore, Langstraat's trial counsel was not ineffective in failing to raise constitutional issues that lacked merit. *State v. Dudley*, 766 N.W.2d 606, 620 (Iowa 2009).

AFFIRMED.