**IN THE COURT OF APPEALS OF IOWA**

No. 9-597 / 08-1981
Filed October 7, 2009

**STATE OF IOWA,**
Plaintiff-Appellee,

**vs.**

**RONNIE LEE SANDERS,**
Defendant-Appellant.

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Appeal from the Iowa District Court for Webster County, Kurt L. Wilke, Judge.

Ronnie Sanders appeals from his conviction and sentence for second-degree sexual abuse. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Elisabeth Reynoldson, Assistant Attorney General, Timothy N. Schott, County Attorney, and Ricki L. Osborn and Corey Kuhn-Coleman, Assistant County Attorneys, for appellee.

Considered by Vogel, P.J., and Potterfield, J. and Beeghly, S.J.*

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

**VOGEL, P.J.**

Ronnie Sanders appeals from his conviction and sentence for second-degree sexual abuse in violation of Iowa Code sections 709.1 and 709.3 (2007). He challenges the sufficiency of the evidence and raises several ineffective-assistance-of-counsel claims. Because we find sufficient evidence supports Sanders's conviction for second-degree sexual abuse and Sanders's trial counsel was not ineffective for failing to argue that section 903B.1 is unconstitutional, we affirm.

**I. BACKGROUND PROCEEDINGS.**

Following a jury trial, Sanders was convicted of willful injury causing bodily injury in violation of Iowa Code section 708.4(2) and second-degree sexual abuse in violation of Iowa Code sections 709.1 and 709.3. On December 1, 2008, the district court sentenced Sanders to five years in prison for the willful injury conviction and twenty-five years for the sexual abuse conviction, the sentences to run concurrently. His sentence included the special sentencing provisions of Iowa Code section 903B.1.

Sanders appeals and asserts (1) sufficient evidence did not support his conviction for second-degree sexual abuse because the State did not prove he used or threatened to use force creating a substantial risk of death or serious injury and (2) his trial counsel was ineffective for failing to object to the imposition of the section 903B.1 sentence, contending it is unconstitutional. He asserts that Iowa Code chapter 903B violates: (1) the equal protection clauses of the United States and Iowa Constitutions; (2) the separation of powers doctrine of the Iowa Constitution; (3) the due process clauses of the United States and Iowa

Constitutions; and (4) the prohibition against cruel and unusual punishment of the United States Constitution.

**II. SUFFICIENCY OF THE EVIDENCE.**

Sanders challenges the sufficiency of the evidence for his conviction of second-degree sexual abuse. We review challenges to the sufficiency of the evidence for correction of errors at law. Iowa R. App. P. 6.4 (2008). "A jury verdict is binding upon this court, and we must uphold the verdict unless the record lacks substantial evidence to support the charge." *State v. Arne*, 579 N.W.2d 326, 327-28 (Iowa 1998). Substantial evidence is evidence that could convince a rational jury that the defendant is guilty beyond a reasonable doubt. *State v. Bash*, 670 N.W.2d 135, 137 (Iowa 2003). The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions that may fairly and reasonably be deduced from the record. *State v. Taylor*, 538 N.W.2d 314, 316 (Iowa Ct. App. 1995). We consider all the evidence admitted at trial, not just the evidence that supports the verdict. *Id*.

In order to prove that Sanders committed second-degree sexual abuse of his accuser (R.S.), the State was required to prove that (1) Sanders performed a sex act with R.S.; (2) Sanders performed the sex act with force or against the will of R.S. or with R.S.'s consent or acquiescence gained by threats or violence; and (3) Sanders used or threatened to use force creating a substantial risk of death or serious injury to R.S. Iowa Code §§ 709.1, 709.3. Sanders does not challenge the first two elements; he argues that the State did not prove he used or threatened to use force creating a substantial risk of death or serious injury.

"[A] substantial risk of death means more than just any risk of death but does not mean that death was likely. If there is a 'real hazard or danger of death,' serious injury is established." *State v. Hilpipre*, 395 N.W.2d 899, 904 (Iowa Ct. App. 1986) (quoting *State v. Phams*, 342 N.W.2d 792, 796 (Iowa 1983)). A substantial risk of serious injury means there was a "real hazard or danger" of serious injury. *Taylor*, 538 N.W.2d at 316. A serious injury includes a bodily injury that (1) creates a substantial risk of death, (2) causes serious permanent disfigurement, or (3) causes protracted loss or impairment of the function of any bodily member or organ. Iowa Code § 702.18 (defining serious injury).

In the present case, Sanders attacked R.S. and choked her until she lost consciousness. She testified that Sanders had his hands around her neck and she "couldn't even breathe even a little bit." She attempted to move so that she could breathe, but Sanders was on top of her pinning her down. She stated "I was afraid I was going to die right there." While unconscious, Sanders took R.S. to a bathroom and removed her clothing, after which she regained consciousness. R.S. pleaded with Sanders not to hurt her because she stated, "I realized what he was capable of doing with him choking me like that." As Sanders penetrated her vagina digitally, she told him to stop numerous times and was crying. Sanders then raped her by forcing her to have oral sex and sexual intercourse.

The emergency room physician who treated R.S. testified that as a result of being choked, R.S. had bruising on her neck and around her eyes, among other injuries. He stated the choking was severe enough to cause the blood

vessels around her eyes to rupture and bleed underneath the skin. Further, in order to cause the injuries from choking, he opined a "severe amount of force" was used, which could be life threatening. He explained,

> Choking can cause death to the brain cells. Depending on which brain cells die at the time, people can die from choking such as she had received . . . . Choking about the neck stops the blood flow. The flow of blood then backs up through the rest of the blood vessels into the brain and those blood vessels pop and burst causing the bruising that we saw about the eyes. But then it also causes anoxic injury, which is a lack of oxygen. With the lack of oxygen, then brain cells, muscle cells and connective tissue cells die.

An optometrist, who also treated R.S., testified that the injuries to her eyes were caused by asphyxiation, or lack of oxygen to the head caused by the strangulation. Additionally R.S. had hemorrhaging of the conjunctiva, which is the thin layer of clear tissue that covers the white part of the eye, and hemorrhages of the skin area around the eyes. He also testified that as a result of strangulation, there was a risk of retinal hemorrhaging that could result in the loss of vision.

The evidence demonstrated that when Sanders strangled R.S. so that she lost consciousness, he used force which created a substantial risk of serious injury and/or death. *Taylor*, 538 N.W.2d at 316 (quoting *State v. Howard*, 284 N.W.2d 201, 202-03 (Iowa 1979)); *see, e.g.*, *State v. Sewell*, 658 A.2d 598, 600 (Conn. App. Ct. 1995) (finding evidence the victim was rendered unconscious by a blow to the head was sufficient to support a jury's finding of serious injury); *State v. Fisher*, 680 P.2d 35, 37 (Utah 1984) (stating that strangulation is an act dangerous to human life done with the intent to cause serious bodily injury—protracted loss or impairment of both the heart and the brain, i.e.,

unconsciousness). Upon review of the evidence, we find the State presented sufficient evidence to support the jury's finding that Sanders used or threatened to use force creating a substantial risk of death or serious injury to R.S.

**III. INEFFECTIVE ASSISTANCE OF COUNSEL.**

Sanders next raises several ineffective-assistance-of-counsel claims.[1] We review these claims de novo. *State v. Martin*, 704 N.W.2d 665, 668 (Iowa 2005). To prevail on an ineffective-assistance-of-counsel claim, Sanders must show by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); *State v. Lane*, 726 N.W.2d 371, 393 (Iowa 2007). While we often preserve ineffective-assistance-of-counsel claims for postconviction proceedings, we consider such claims on direct appeal if the record is sufficient. *State v. Tate*, 710 N.W.2d 237, 240 (Iowa 2006). The record is sufficient to address Sanders's claims.

To prove that counsel breached an essential duty, a defendant must overcome a presumption that counsel was competent and show that counsel's

[1] Sanders also raises ineffective-assistance-of-counsel claims pro se, stemming from the district court's denial of his motion for a mistrial and claiming his trial counsel should have objected to an alleged violation of a motion in limine. However, Sanders does not cite to any portion of the record to support his factual assertions or cite to any authority to support his arguments. *See* Iowa R. App. P. 6.14 (requiring citation to the record and authorities relied on); *Inghram v. Dairyland Mut. Ins. Co.*, 215 N.W.2d 239, 240 (Iowa 1974) ("To reach the merits of this case would require us to assume a partisan role and undertake [a party's] research and advocacy. This role is one we refuse to assume."). Further, Sanders does not state how he was prejudiced. *See Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994) (requiring a defendant to state the specific ways in which counsel's performance was inadequate and identify how competent representation would have changed the outcome; refusing to preserve claims of a general nature). The State cites to possible places to which Sanders could have been referring. Even reviewing those parts of the record does not lead us to find any prejudice.

performance was not within the range of normal competency. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994).

> Although counsel is not required to predict changes in the law, counsel must exercise reasonable diligence in deciding whether an issue is worth raising. In accord with these principles, we have held that counsel has no duty to raise an issue that has no merit.

*State v. Dudley*, 766 N.W.2d 606, 620 (Iowa 2009). To prove that prejudice resulted, a defendant must show there is a reasonable probability that but for counsel's unprofessional errors the result of the proceeding would have been different. *Ledezma v. State*, 626 N.W.2d 134, 143 (Iowa 2001).

Because counsel has no duty to raise a meritless issue, we will first determine whether Sanders's alleged constitutional violations have any validity. *See Dudley*, 766 N.W.2d at 620. "If his constitutional challenges are meritorious, we will then consider whether reasonably competent counsel would have raised these issues and, if so, whether [Sanders] was prejudiced by his counsel's failure to do so." *Id*.

Sanders asserts his trial counsel was ineffective for failing to raise various constitutional challenges to Iowa Code chapter 903B. Statutes are cloaked with a presumption of constitutionality. *State v. Musser*, 721 N.W.2d 734, 741 (Iowa 2006); *State v. Seering*, 701 N.W.2d 655, 661 (Iowa 2005). To overcome this presumption, Sanders must prove that chapter 903B is unconstitutional beyond a reasonable doubt, which can only be accomplished by refuting "every reasonable basis upon which the statute could be found to be constitutional." *Seering*, 701 N.W.2d at 661 (citations omitted).

**A. Equal Protection and Separation of Powers.**

Sanders first claims that his trial counsel rendered ineffective assistance by not arguing that Iowa Code chapter 903B violates the equal protection clauses of the United States and Iowa Constitutions and the separation of powers doctrine of the Iowa Constitution. In *State v. Wade*, 757 N.W.2d 618 (Iowa 2008), our supreme court examined and rejected the same equal protection and separation of powers claims in context of Iowa Code section 903B.2. *See Wade*, 757 N.W.2d at 624, 627. We find *Wade* controlling as to the equal protection and separation of powers claims in the present case. Therefore, Sanders's claims regarding chapter 903B must fail.

**B. Due Process.**

Sanders next claims his trial counsel rendered ineffective assistance by not arguing that Iowa Code chapter 903B violates his rights to both procedural and substantive due process. *See* U.S. Const. amend. XIV; Iowa Const. art. I, § 9.[2] "Due process protections can be broken down into 'procedural' due process and 'substantive' due process rights." *State v. Izzolena*, 609 N.W.2d 541 (Iowa 2000). First, we examine Sanders's procedural due process claim. "A person is entitled to procedural due process when state action threatens to deprive the person of a protected liberty interest." *Seering*, 701 N.W.2d at 665. Protected liberty interests have their source in the United States Constitution and

[2] The due process clauses of the United States and Iowa Constitutions are nearly identical in scope, import, and purpose. *State v. Hernandez-Lopez*, 639 N.W.2d 226, 237 (Iowa 2002). Sanders does not argue that we should utilize a different analysis under the Iowa Constitution. Therefore, our discussion of his due-process argument applies to both his federal and state claims. *Dudley*, 466 N.W.2d at 624 (using the same analysis to interpret the due process clauses of the United States and Iowa Constitutions because neither party suggested the Iowa provision should be interpreted differently than its federal counterpart).

"include such things as freedom from bodily restraint, the right to contract, the right to marry and raise children, and the right to worship according to the dictates of a person's conscience." *State v. Willard*, 756 N.W.2d 207, 214 (Iowa 2008). "We consider the type of process due and determine whether the procedures provided in the statute adequately comply with the process requirements." *State v. Hernandez-Lopez*, 639 N.W.2d 226, 240 (Iowa 2002).

In order to determine what process is due, we balance three factors: (1) the private interest that will be affected by government action; (2) the risk of an erroneous deprivation of this interest by the current procedures used and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest in the regulation, including the burdens imposed by additional or different procedures. *Seering*, 701 N.W.2d at 665; *Hernandez-Lopez*, 639 N.W.2d at 241. "At the very least, procedural due process requires notice and opportunity to be heard in a proceeding that is adequate to safeguard the right for which the constitutional protection is invoked." *Seering*, 701 N.W.2d at 665-66 (citations omitted). However, a particular procedure does not violate due process just because another method may seem fairer or wiser. *Id*. at 666.

Sanders was found guilty by a jury and following a sentencing hearing the section 903B.1 sentence was imposed. He does not assert a procedural due process claim stemming from the imposition of the section 903B.1 sentence. Rather, he claims that if he violates the rules of parole and his release is revoked, the statute contemplates additional proceedings that are not specified. The State responds that because Sanders has not violated any terms of his parole, this issue is not ripe for review and even if it were ripe, "section 903B.1

specifically affords [the] defendant the procedural safeguards contained in Iowa Code chapters 901B, 905, 906 and 908, as well as 'rules adopted under those chapters for persons on parole.'"

"A case is ripe for adjudication when it presents an actual, present controversy, as opposed to one that is merely hypothetical or speculative." *Wade*, 757 N.W.2d at 627; *State v. Bullock*, 638 N.W.2d 728, 734 (Iowa 2002). The basic rationale for the ripeness doctrine is "to protect [administrative] agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Bullock*, 638 N.W.2d at 734 (citations omitted). This rationale is especially applicable in the present case because "[t]o the extent there are consequences extending from a parole violation, such decisions are executive or administrative decisions." *Wade*, 757 N.W.2d at 628. Because Sanders's argument is based upon a possible future violation of parole and consequences from that violation, we conclude this issue is not ripe. *See id*. at 627-28 (holding that a constitutional challenge to Iowa Code section 903B.2 that was based upon future parole violations was not ripe).

Next, we examine Sanders's substantive due process claims. In a substantive due process examination, we first determine the "nature of the individual right involved." *Seering*, 701 N.W.2d at 662. If a fundamental right is involved, we apply strict scrutiny analysis. *Id*.; *see State v. Groves*, 742 N.W.2d 90, 93 (Iowa 2007) ("Strict scrutiny requires us to determine whether the statute is narrowly tailored to serve a compelling state interest."). "[O]nly fundamental rights and liberties which are deeply rooted in this Nation's history and tradition

and implicit in the concept of ordered liberty qualify for such protection." *Seering*, 701 N.W.2d at 664 (citations and quotations omitted). On the other hand, if a fundamental right is not involved, we apply a rational basis analysis. *Id*.

Sanders essentially argues chapter 903B is facially unconstitutional on substantive due process grounds. He does not argue whether a strict scrutiny or a rational basis test applies, but argues in part that the "government intrusions [are] based upon . . . the unpopularity of the class."[3] The State responds that the section 903B.1 sentence does not violate a fundamental right and a rational basis test applies.

A person convicted of a crime that subjects the person to imprisonment has no fundamental liberty interest in freedom from extended supervision. *See Meachum v. Fano*, 427 U.S. 215, 224, 96 S. Ct. 2532, 2538, 49 L. Ed. 2d 451, 459 (1976).

> [G]iven a valid conviction, the criminal defendant has been constitutionally deprived of his liberty to the extent that the State may confine him and subject him to the rules of its prison system so long as the conditions of confinement do not otherwise violate the Constitution.

*Id.* Section 903B.1 commits a convicted person into the custody of the director of the Iowa Department of Corrections, where "the person shall begin the sentence under supervision as if on parole." "Any additional imprisonment will be realized only if [the convicted person] violates the terms of . . . parole." *Wade*, 757 N.W.2d at 624. Additionally, "[t]he protections of substantive due process have

[3] The State responds in part that sex offenders are not a suspect class. They are not. *See Wade*, 757 N.W.2d at 626 ("Because sex offenders present a special problem and danger to society, the legislature may classify them differently."); *see also United States v. LeMay*, 260 F.3d 1018, 1030 (9th Cir. 2001) (holding that sex offenders are not a suspect class).

for the most part been accorded to matters relating to marriage, family, procreation, and the right to bodily integrity." *Albright v. Oliver*, 510 U.S. 266, 271-72, 114 S. Ct. 807, 812, 127 L. Ed. 2d 114, 122 (1994). The matter involved here, the asserted right of a person convicted of and imprisoned for a crime to be free from parole supervision by the state, is different in kind than the privacy and liberty interests noted in *Albright*. *See People v. Oglethorpe*, 87 P.3d 129, 134 (Colo. Ct. App. 2004) (discussing a substantive due process challenge to Colorado Sex Offender Lifetime Supervision Act of 1998, which requires imposition of indefinite sentence upon sex offender, and rejecting a strict scrutiny analysis because "[a]n adult offender has no fundamental liberty interest in freedom from incarceration"). We agree with the State that a rational basis analysis applies here.

A rational basis standard requires us to consider whether there is "a reasonable fit between the government interest and the means utilized to advance that interest." *Hernandez-Lopez*, 639 N.W.2d at 238. As discussed by our supreme court, "[t]he State has a strong interest in protecting its citizens from sex crimes." *Wade*, 757 N.W.2d at 625. Victims of sex crimes suffer from devastating effects, including physical and psychological harm. *See id.* at 626 (discussing that the devastating effects of sex crimes on victims provide a rational basis for classifying sex offenders differently). Furthermore, "[t]he risk of recidivism posed by sex offenders is 'frightening and high.'" *Id.* (quoting *Smith v. Doe*, 538 U.S. 84, 103, 123 S. Ct. 1140, 1153, 155 L. Ed. 2d 164, 183-84 (2003)); *Seering*, 701 N.W.2d at 665. We find there is a reasonable fit between

the State's interest in protecting its citizens from sex crimes and the special sentence imposed pursuant to section 903B.1.

Sanders argues that chapter 903B violates due process because under section 903B.1 the "special sentence of lifetime supervision constitutes punishment for crimes not committed." However, this argument is misplaced. Section 903B.1 clearly states that a person convicted of second-degree sexual abuse, "shall also be sentenced, in addition to any other punishment provided by law, to a special sentence . . . ." Sanders is not being punished "for crimes not committed," but rather for second-degree sexual abuse pursuant to sections 709.1 and 709.3. Furthermore, Sanders's sentence has not been served; the special sentence is part of his sentence for second-degree sexual abuse that he is currently serving. Our legislature has determined that certain sexual abuse crimes require special sentencing pursuant to chapter 903B. We find Sanders's argument that chapter 903B facially violates the due process clauses is without merit.

Finally, Sanders states the "special sentence authorizes new terms of imprisonment for . . . conduct which would not be deemed criminal for others." Similar to Sanders's procedural-due-process claim, this argument is based upon a possible future violation of parole and the potential consequences of such a violation, including the potential for new terms of imprisonment. This issue is not ripe for our review. *See Wade*, 757 N.W.2d at 628 (holding that a constitutional challenge to Iowa Code section 903B.2 that was based upon future parole violations was not ripe). We conclude that Iowa Code section 903B.1 does not

violate the due process clauses of the United States and Iowa Constitutions. Counsel did not render ineffective assistance by not urging that it did.

**C. Cruel and Unusual Punishment.**

Finally, Sanders claims counsel rendered ineffective assistance by not urging that section 903B.1 imposes cruel and unusual punishment in violation of the United States Constitution. The United States Constitution forbids cruel and unusual punishment. U.S. Const. amend. VIII; *see Wade*, 757 N.W.2d at 623 (stating the Eighth Amendment is applicable to the states through the Fourteenth Amendment). This protection "flows from the basic 'precept of justice that punishment for [a] crime should be graduated and proportioned to [the] offense.'" *Wade*, 757 N.W.2d at 623 (quoting *Kennedy v. Louisiana*, ___ U.S. ___, ___, 128 S. Ct. 2641, 2649, 171 L. Ed. 2d 525, 538 (2008)). "Punishment may be considered cruel and unusual because it is so excessively severe that it is disproportionate to the offense charged." *Id*. (citations omitted).

> Generally, a sentence that falls within the parameters of a statutorily prescribed penalty does not constitute cruel and unusual punishment. Only extreme sentences that are "grossly disproportionate" to the crime conceivably violate the Eighth Amendment.
>
> Substantial deference is afforded the legislature in setting the penalty for crimes. Notwithstanding, it is within the court's power to determine whether the term of imprisonment imposed is grossly disproportionate to the crime charged. If it is not, no further analysis is necessary.

*State v. Cronkhite*, 613 N.W.2d 664, 669 (Iowa 2000) (citations omitted).

Sanders was convicted of second-degree sexual abuse, which is a class B felony punishable by a term of imprisonment not to exceed twenty-five years. Iowa Code §§ 709.3, 902.9(2). Because second-degree sexual abuse is a

forcible felony, Sanders must serve at least seventy percent of his prison sentence before being eligible for parole or work release. *Id.* § 902.12(3). Pursuant to section 903B.1, Sanders is subject to a life-time special sentence. If he violates the terms of his parole, he might have his parole revoked and be required to serve no more than two years upon any first revocation and no more than five years on any second or subsequent revocation. *Id*. § 903B.1. Sanders contends the special sentence is disproportionate to the offense.

Our analysis begins with a threshold test that measures the harshness of the penalty against the gravity of the offense. *Wade*, 757 N.W.2d at 623; *see Musser*, 721 N.W.2d at 749 (discussing that the *Solem* proportionality test is used only in the rare case where "a threshold comparison of the crime committed to the sentence imposed leads to an inference of gross disproportionality"); *see also Solem v. Helm*, 463 U.S. 277, 292, 103 S. Ct. 3001, 3011, 77 L. Ed. 2d 637, 650 (1983) (stating a court should consider gravity of offense, harshness of penalty, sentences imposed on other criminals in the same jurisdiction, and sentences imposed for commission of the same crime in other jurisdictions). This is an objective analysis completed without considering the individualized circumstances of the defendant or the victim in the present case. *Wade*, 757 N.W.2d at 624.

Section 903B.1 imposes a special sentence upon the conviction of a Class C felony or greater sex offense. "[S]ex offenses are considered particularly heinous crimes." *People v. Dash*, 104 P.3d 286, 293 (Colo. Ct. App. 2004). As noted above, victims of this offense suffer from devastating effects, including physical and psychological harm, and sex offenders have a "frightening and high"

risk of recidivism. *See Wade*, 757 N.W.2d at 626 (quoting *Doe*, 538 U.S. at 103, 123 S. Ct. at 1153, 155 L. Ed. 2d at 183-84); *Seering*, 701 N.W.2d at 665.

Further, the offender is sentenced to parole supervision and only if the terms of parole are violated might any additional imprisonment occur. Iowa Code § 903B.1; *Wade*, 757 N.W.2d at 624. "[S]ex offenders present a continuing danger to the public and [] a program providing for lifetime treatment and supervision of sex offenders is necessary for the safety, health, and welfare of the state." *Dash*, 104 P.3d at 293; *see also Wade*, 757 N.W.2d at 624 (holding that imposition of a ten-year special sentence for misdemeanor and class D felony sex offenses, with provisions for revocation of release identical to those in section 903B.1, does not constitute imposition of cruel and unusual punishment). We also note the State's citations to numerous other states' statutes with similar special sentences. *See, e.g.*, Wis. Stat. § 939.615 (2009) (providing that a sex offender may be sentenced to lifetime supervision); *see also United States v. Moriarty*, 429 F.3d 1012, 1025 (11th Cir. 2005) ("[W]e conclude that a lifetime term of supervised release is not grossly disproportionate to his child pornography offenses under 18 U.S.C. § 2552A, and his Eighth Amendment claim therefore fails."). We conclude that section 903B.1 (2007) is not grossly disproportionate to the gravity of the offenses to which it applies and its imposition does not constitute cruel and unusual punishment.

Next, Sanders argues that even if the special sentence itself is not cruel and unusual punishment, the requirement that he register with the state's sex offender registry and the accompanying residency restrictions together with the special sentence cumulatively result in cruel and unusual punishment. *See* Iowa

Code §§ 692A.2(1) (setting forth the sex offender registration requirement), 692A.2A (prohibiting a registered sex offender from residing within two thousand feet of a school or child care facility). However, the registration requirement pursuant to section 692A.2(1) and the residency restriction pursuant to section 692A.2A are not "punishment." *See Willard*, 756 N.W.2d at 212 (stating that "being subject to the residency restrictions [of Iowa Code section 692A.2A] is not punishment"); *State v. Pickens*, 558 N.W.2d 396, 399-400 (Iowa 1997) (holding that the registration requirement of Iowa Code section 692A.2(1) is remedial and not punitive). Because they are not punitive, their imposition together with the special sentence does not add to the "punishment" imposed. Again, we find no violation of the prohibition against cruel and unusual punishment.

**IV. CONCLUSION.**

We find Sanders's conviction for second-degree sexual abuse was supported by substantial evidence. Further, we conclude that Iowa Code chapter 903B does not violate the United States or Iowa Constitutions as Sanders claimed. Therefore, Sanders's trial counsel did not render ineffective assistance by not making such claims. We affirm Sanders's conviction and sentence.

**AFFIRMED.**