

CERTIFICATE OF SERVICE AND FILING

On the 13th day of April, 2017, the undersigned did serve the within Appellant's Reply Brief on all other parties to this appeal through EDMS and by electronic transmission to CAmail@ag.state.ia.us, and upon the Respondent-Appellant by Regular United States Mail.

I further certify that on April 13, 2017, I will electronically file this document through EDMS with the Clerk of the Iowa Supreme Court, Iowa Judicial Building, 1111 East Court Avenue, Des Moines, Iowa 50319.

STATE PUBLIC DEFENDER'S OFFICE



MICHAEL H. ADAMS, AT0000357
Local Public Defender
Special Defense Unit
401 East Court Avenue, Suite 150
Des Moines, Iowa 50309
Telephone : (515) 288-0578
Facsimile : (515) 288-2020
Email: madams@spd.state.ia.us

TABLE OF CONTENTS

| | Page |
|---|-------------|
| Certificate of Service and Filing..... | i |
| Table of Authorities | ii |
| Statement of the Issue Present for Review | 1 |
| Statement of the Case | 2 |
| Argument | 2 |
| Conclusion | 11 |
| Attorney’s Cost Certificate..... | 12 |
| Certificate of Compliance | 13 |

TABLE OF AUTHORITIES

| Cases | Page |
|--|-------------|
| <i>In Re the Detention of Gonzales</i> , 658 N.W.2d 102 (Iowa 2003) | 6 |
| <i>In Re the Detention of Huss</i> , 688 N.W.2d 58 (Iowa 2004) | 5 |
| <i>In Re the Detention of Shaffer</i> , 769 N.W.2d 169 (Iowa 2009) | 8 |
| <i>In Re the Detention of West</i> , 829 N.W.2d 589 (Table) (Iowa Ct. App. 2013)..... | 10,11 |
| <i>In Re the Detention of Willis</i> , 691 N.W.2d 726 (Iowa 2005) | 5 |
| <i>State v. Willis</i> , 2000 WK 702396..... | 6 |

Statutes and Court Rules

Iowa Code section 229A.13
Iowa Code section 229A.33
Iowa Code section 229A.3(1)(a)5
Iowa Code section 229A.4(1).....2
Iowa R. App. P. 6.903(4)1

Other Authorities

Webster’s Collegiate Dictionary, Tenth Edition, (1995)3

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

UNDER IOWA CODE SECTION 229A.4(1), MUST A PERSON BE IMPRISONED OR TOTALLY CONFINED IN A PRISON, JAIL, OR OTHER PLACE UNDER LIKE CONDITIONS TO BE DEEMED TO BE “CONFINED”

Authorities

Cases

In Re the Detention of Gonzales, 658 N.W.2d 102 (Iowa 2003)

In Re the Detention of Huss, 688 N.W.2d 58 (Iowa 2004)

In Re the Detention of West, 829 N.W.2d 589 (Table) (Iowa Ct. App. 2013)

In Re the Detention of Shaffer, 769 N.W.2d 169 (Iowa 2009)

In Re the Detention of Willis, 691 N.W.2d 726 (Iowa 2005)

State v. Willis, 2000 WK 702396

Statutes and Court Rules

Iowa Code section 229A.1

Iowa Code section 229A.3

Iowa Code section 229A.3(1)(a)

Iowa Code section 229A.4(1)

Iowa R. App. P. 6.903(4)

Other Authorities

Webster's Collegiate Dictionary, Tenth Edition, (1995)

STATEMENT OF THE CASE

COMES NOW, the Respondent, Nicholas Wygle, pursuant to Iowa R. App. P. 6.903(4), and hereby submits the following argument in reply to the State's Brief filed on March 28, 2017.

While Wygle's Brief adequately addresses the issues presented for review, a short reply is necessary to address several contentions raised by the State.

ARGUMENT

WYGLE WAS NOT IMPRISONED OR *TOTALLY CONFINED* IN A PRISON, JAIL, OR OTHER PLACE UNDER SIMILAR CONDITIONS, SO HE WAS THEREFORE NOT "CONFINED" AS REQUIRED BY IOWA CODE SECTION 229A.4(1)

In its Brief, the State misconstrues Wygle's position to the effect that only prison will satisfy the "presently confined" requirement under chapter 229A. Wygle's position is that the "presently required" standard can be satisfied in any case where a respondent is totally confined, whether it be in prison, jail, or any

other situation where the person is imprisoned. It cannot, however, be satisfied in situations that are less restrictive than total confinement such as probation, parole, work release, or while a serving a section 903B special sentence.

“Imprison” is not defined in chapter 229A, however Webster’s Collegiate Dictionary, Tenth Edition, (1995) defines “imprison” as “to put in *or as if* in prison: CONFINE.” (Italics added).

To the extent that Wygle has created confusion about this issue for his failure to include jail as a potential setting for total confinement, there are two reasons for not including confinement in a jail in his original Brief. First, when the legislature created chapter 229A, it outlined its concerns and the need for the statute, as well as the procedure to be followed in implementing the statute. It used the terms “prison” (Iowa Code sections 229A.1 and 229A.3) and “total confinement” (Iowa Code section 229A.3). It did so because the normal course of a chapter 229A “presently confined” case begins as the person is nearing the end of a sentence of incarceration in prison. Given the legislature’s concern over the small but extremely dangerous group of sex offenders that make up the group of sexually violent predators, it makes sense that the

legislature would be more concerned with offenders serving sentences in prison for serious crimes rather than those serving sentences in jail of one year or less for comparatively minor crimes. This omission, however, does not affect the nature and quality of total confinement or imprisonment in a county jail as opposed to a prison. Logic dictates that the legislative intent to keep dangerous sexually violent predators incarcerated would apply equally to sexually violent predators *presently confined* in jail as to those sexually violent predators *presently confined* in prison.

Secondly, the issue of confinement in a jail was not implicated in the present case because Wygle had been released from total confinement in prison not a jail. Again, the intent was not to limit the locations where a person could be totally confined; rather it was to explain the type of confinement the legislature envisioned when it referenced “total confinement”.

At page 14 of its Brief, the State indicates that “respondent appears to hang much of his argument on the reference to ‘total confinement’ in section 229A.3(1)(a).” The State continues by stating that section 229A.3(1)(a) is not a substantive limit on State authority or a requirement to file a chapter 229A petition, but is

merely intended to be a heads up to the Attorney General. It is true that the heart of Wygle's argument is that he was not *totally confined* and therefore not "presently confined" as required under chapter 229A. The State is also correct in pointing out that the notice requirements contained in section 229A.3(1)(a) are not jurisdictional and are only designed to be a heads up to the Attorney General. See *In Re the Detention of Huss*, 688 N.W.2d 58 (Iowa 2004). However, the 90-day notice under section 229A.3(1)(a) is not at issue in the present case, nor was the *Huss* Court asked to determine the physical requirements of being "presently confined" under chapter 229A.

The State has cited *In Re the Detention of Willis*, 691 N.W.2d 726 (Iowa 2005), as support for the district court's decision herein. Like *Huss*, *Willis* examined section 229A.3(1)(a) and found the wisdom in its *Huss* decision concerning the notice requirements of section 229A.3(1)(a).

Willis was not the normal chapter 229A civil commitment case referred to earlier, and in fact was procedurally abnormal. The 229A action against Willis came while he was confined in the Henry County Jail rather than prison. Willis had been in prison serving a

sentence for a Sexual Abuse in the Second Degree. *Id.* at 727-28. While in prison, Willis sexually assaulted another inmate and was thereafter convicted of Sexual Abuse in the Third Degree for that assault. *Id.* He was sentenced to an indeterminate ten year sentence of incarceration, however that conviction was reversed and remanded for a new trial in *State v. Willis*, 2000 WL 702396. *Id.* Upon retrial on the charge of Sexual Abuse in the Third Degree, the jury returned a verdict of the lesser included offense of Assault With Intent to Commit Sexual Abuse. The verdict was returned on December 6, 2000, and sentencing was set December 26, 2000. *Id.*

The Henry County Sheriff, who was holding Willis in the Henry County Jail, determined that Willis had probably served enough time to discharge the Assault sentence, and would likely be released at sentencing on December 26, 2000. He notified the Attorney General's Office of such, and on December 21, 2000, the State filed a chapter 229A petition against Willis. *Id.*

On appeal, Willis did not contest his physical confinement by the Sheriff, but instead challenged the legal ramifications of the lack of notice 90 days prior to his anticipated release, and argued that he was not *convicted* for a sexually violent offense when the

State filed its chapter 229A petition, therefore he was not “presently confined” for a sexually violent offense as required by chapter 229A and *In Re the Detention of Gonzales*, 658 N.W.2d 102 (Iowa 2003).

The Supreme Court rejected Willis’ claims, ruling that chapter 229A does not require a conviction for a sexually violent offense, it only requires that the person be confined for a sexually violent offense:

Neither the language of section 229A.4(1), nor our interpretation of that statute in *In re Detention of Gonzales*, 658 N.W.2d 102, 103-04 (Iowa 2003), requires that the subject of a petition for a sexually violent predator adjudication be convicted of a sexually violent offense before the petition is filed under section 229A.4(1). It is only necessary that the subject be “presently confined” for a sexually violent offense. *Gonzales*, 658 N.W.2d at 104. The basis for the sheriff’s custody of Willis at the time the petition was filed was the fact that he had committed a sexually violent offense. This satisfies the statutory requirement for the filing of the petition by the attorney general.

Id. at 729. It also affirmed its ruling concerning the section 229A.3(1)(a) notice requirement that it had previously made in *Huss*. *Id.* at 728.

At the time the State filed its petition, Willis had committed a sexually violent offense because there was a jury verdict rendered on December 20, 2000 finding that to be the case. More

importantly to the present case however, Willis was confined for that offense. He was *totally confined* by virtue of the fact that he was imprisoned in the Henry County Jail.

The State also cites to the Court's decision in *In Re the Detention of Shaffer*, 769 N.W.2d 169 (Iowa 2009). *Shaffer* likewise does not help the State. At the time of the State's chapter 229A petition against him, Shaffer was incarcerated in the Anamosa State Prison. He was totally confined. His argument on appeal was that he was being held illegally after the expiration of his sentence, and therefore he was not "presently confined" for a sexually violent offense. *Id.* at 172-73. As in *Willis*, Shaffer at no time contested the fact that he was confined; rather in both cases legal assertions were made as to whether such confinement satisfied a legal definition or standard.

The State asserts that "*Shaffer* and *Willis* both weigh in favor of affirming the district court here, rather than accepting the respondent's hypertechnical argument that presently confined refers only to prison." State's Brief, page 10. As explained previously, Wygle's argument is simply that a person facing a chapter 229A commitment under the "presently confined"

alternative must be totally confined at the time the petition is filed. That confinement is most likely going to be a prison, but may also include a jail, or other place where there is total confinement or imprisonment. *Shaffer* and *Wygle* do not inform this issue since both Shaffer and Willis were totally confined and imprisoned when the respective 229A petitions were filed against them. The issue in the present case is not a technical one, let alone a hypertechnical one.

The State cites to *In Re the Detention of Gonzales*, 658 N.W.2d 102 (Iowa 2003), as “the only Iowa Supreme Court case to find a respondent was not presently confined. . .” State’s Brief, p. 11. Like *Willis* and *Shaffer*, *Gonzales* is simply not applicable to the present case. No one has ever contested the fact that Gonzales was confined in the physical sense. He was imprisoned in a prison. What was challenged in *Gonzales* was whether such a confinement was enough to satisfy due process, or whether it had to be confinement for a sexually violent offense.

The State directs the Court to several non-Iowa cases and non-Iowa statutes. These are offered to help this Court determine what the legislature meant when it wrote chapter 229A. These

authorities involve a federal circuit court relaying a California appellate court's ruling on California law; and Sexually Violent Predator Act provisions from other states, and how their respective appellate courts have derived the meaning of their state's statutes. Such authority is unnecessary in the present case because the plain language of Iowa Code chapter 229A is clear and unambiguous and does not need to be construed any further than what it has already been construed by the Iowa Court of Appeals.

The issue in the present case is what is meant by the term "presently confined". Likewise, an issue examined by the Court of Appeals in *In Re the Detention of West*, 829 N.W.2d 589 (Table) (Iowa Ct. App. 2013) was the importance of the legislature's use of the words "confinement" and "total confinement". Using the plain and ordinary meanings of the words used by the legislature, the Iowa Court of Appeals determined that "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, *Id.* at 3, and that "[g]iven the legislature's intent to protect the community by keeping SVPs in secure facilities, it makes sense that such a petition should be filed

before a potential SVP is released into society, even if the anticipated release is subject to parole, probation, or any other kind of supervision.” *Id.* (italics in original).

CONCLUSION

Iowa Code chapter 229A allows a petition to be filed in two circumstances—when a person is “confined” for a sexually violent offense, and when a person is not confined but has committed a recent overt act of a sexually violent nature. The plain language of Iowa Code chapter 229A is clear and unambiguous and requires that a person be totally confined or imprisoned in a prison, jail, or other such facility before the State files a chapter 229A petition under the “confined” alternative. The Iowa Court of Appeals has specifically addressed this issue in *In Re the Detention of West*, 829 N.W.2d 589 (Table) (Iowa Ct. App. 2013).

The chapter 229A petition against Wygle was filed after he was released into the community after completing the total confinement portion of his sentence. Because he was not *totally confined*, Wygle was not “confined” at the time of said petition as is required by Iowa

Code section 229A.3(1)(a), so the petition against him was improper and should be dismissed.

For the foregoing reasons, Wygle prays the Court to reverse the judgment of the district court, and to remand this case to the district court for dismissal of the State's petition.

Respectfully submitted,

STATE PUBLIC DEFENDER'S OFFICE



MICHAEL H. ADAMS, AT0000357
Local Public Defender
State Public Defender's Special Defense Unit
Lucas Building, Fourth Floor
Des Moines, Iowa 50319
Telephone : (515) 281-4977
Facsimile : (515) 281-8922
Email: madams@spd.state.ia.us

ATTORNEY'S COST CERTIFICATE

I, the undersigned, hereby certify that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$0, and that amount has been paid in full by the Office of the State Public Defender.



MICHAEL H. ADAMS, AT0000357
Local Public Defender
State Public Defender's Special Defense Unit

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR BRIEFS**

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) because:

[X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 2,085 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).



MICHAEL H. ADAMS, AT0000357
Local Public Defender

Dated: April 13, 2017