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**IN THE
COURT OF APPEALS OF INDIANA**

MARIO L. SIMS, SR.,)
)
Appellant-Defendant,)
)
vs.) No. 71A03-0807-CR-382
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Steven E. King, Special Judge
Cause No. 71D05-9401-CF-60

April 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Mario L. Sims, Sr., appeals the trial court's denial of his petition for contempt against the Indiana Department of Correction. Sims raises one issue, which we revise and restate as whether the trial court abused its discretion by not holding officials with the Indiana Department of Correction in contempt. We affirm.

The relevant facts follow. In June 1994, Sims was convicted of burglary as a class B felony, two counts of criminal deviate conduct as class A felonies, and two counts of rape as class A felonies. The trial court sentenced Sims to ten years with eight years suspended for the burglary conviction to be served consecutive to concurrent sentences of twenty-five years each for the two criminal deviate conduct convictions and the two rape convictions, for a total sentence of thirty-five years with eight years suspended in the Indiana Department of Correction. In December 2006, Sims was released, and he registered on Indiana's sex offender registry.

On January 2, 2008, Sims filed a verified motion to determine registration status arguing that, under Jensen v. State, 878 N.E.2d 400 (Ind. Ct. App. 2007), trans. granted, the requirement that he register as a sexually violent predator violated federal and state *ex post facto* clauses. After a hearing on the motion, the trial court issued the following order on February 12, 2008:

* * * * *

4. [Sims] should not be considered a sexually violent predator.
5. As applied to [Sims], the requirement that he be required to register as a sexually violent predator will violate the prohibition against *ex post facto* laws per *Jensen v. State*, 878 N.E.2d 400 (Ind. Ct. App. 12-26-07).

6. [Sims] should be required to register with the sex offender registry for a limited period of ten (10) years.

WHEREFORE IT IS ORDERED AND ADJUDGED [Sims] shall not be considered a sexually violent predator and shall be required to register with the sex offender registry for a finite period of ten (10) years.

Appellant's Appendix at 51-52.

On June 10, 2008, Sims filed a "Verified Rule to Show Cause for Refusal to Comply with a Court Order, for Contempt, Compensation, and Punitive Damages" arguing that certain officials at the Indiana Department of Correction who were "fully aware" of the trial court's order finding that Sims was not a sexually violent predator should be held in contempt for failing to comply with the order. Id. at 36. The trial court denied the petition, finding that the February 12, 2008 order "contained no edict or command directed at the [officials] of the Indiana Department of Correction, a prerequisite to a finding of contempt." Id. at 57.

The issue is whether the trial court abused its discretion by not holding officials with the Indiana Department of Correction in contempt.¹ Ind. Code § 34-47-3-1 provides:

A person who is guilty of any willful disobedience of any process, or any order lawfully issued:

- (1) by any court of record, or by the proper officer of the court;
- (2) under the authority of law, or the direction of the court; and
- (3) after the process or order has been served upon the person;

¹ Sims's petition also sought "compensatory and punitive damages against the Indiana Department of Correction," which the trial court denied. Appellant's Appendix at 58. Sims does not appeal the trial court's order with respect to compensatory and punitive damages.

is guilty of an indirect contempt of the court that issued the process or order.

Consistent with this statutory provision, Indiana courts have long held that “[i]ndirect contempt is the willful disobedience of any lawfully entered court order of which the offender has notice.”² City of Gary v. Major, 822 N.E.2d 165, 169 (Ind. 2005).

To be held in contempt for failure to follow the court’s order, a party must have willfully disobeyed the court order. Id. at 170 (citing Ind. High Sch. Athletic Ass’n v. Martin, 765 N.E.2d 1238, 1241 (Ind. 2002)). The order must have been so clear and certain that there could be no question as to what the party must do, or not do, and so there could be no question regarding whether the order is violated. Id. A party may not be held in contempt for failing to comply with an ambiguous or indefinite order. Id. Otherwise, a party could be held in contempt for obeying an ambiguous order in good faith. Id. The determination of whether a party is in contempt of court is a matter left to the discretion of the trial court. Id. at 171. We will reverse a trial court’s finding of contempt only if there is no evidence or inference therefrom to support the finding. Id.

Sims argues that certain officials at the Indiana Department of Correction should be held in contempt for their failure “to remove Sims as a sexually violent predator” pursuant to the trial court’s February 12, 2008 order. Appellant’s Brief at 5. Although the trial court held that the requirement that Sims register as a sexually violent predator violated the prohibition against ex post facto laws under Jensen and, therefore, ordered

² Direct contempt, on the other hand, involves actions in the presence of the court, such that the court has personal knowledge of them. Pryor v. Bostwick, 818 N.E.2d 6, 12 (Ind. Ct. App. 2004). Direct contempt is not at issue in this case.

that Sims “shall not be considered a sexually violent predator,” the February 12, 2008 order did not direct the Indiana Department of Correction, which was not a party to the proceeding, to do or refrain from doing anything. Appellant’s Appendix at 52. To support a finding of contempt, a court order must be “so clear and certain that there could be no question as to what the party must do, or not do, and so there could be no question regarding whether the order is violated.” City of Gary, 822 N.E.2d at 170. We cannot say that the February 12, 2008 order clearly directed the Indiana Department of Correction, which was not even referenced in the order, to remove Sims from the Indiana Sex Offender Registry as a violent sex predator. Accordingly, the trial court did not abuse its discretion when it denied Sims’s petition for contempt.

For the foregoing reasons, we affirm the trial court’s denial of Sims’s petition for contempt.

Affirmed.

CRONE, J. and BRADFORD, J. concur