

**IN THE COURT OF APPEALS OF IOWA**

No. 22-0783  
Filed March 6, 2024

**IN RE DETENTION OF JORDAN NICHOLAS SANFORD,**

**JORDAN NICHOLAS SANFORD,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Linn County, Fae Hoover Grinde,  
Judge.

Jordan Sanford appeals from the district court's finding that he is a sexually  
violent predator. **AFFIRMED.**

Thomas Hurd of Law Office of Thomas Hurd PLC, Des Moines, for  
appellant.

Brenna Bird, Attorney General, and Nicholas E. Siefert, Assistant Attorney  
General, for appellee State.

Considered by Schumacher, P.J., Ahlers, J., and Vogel, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206  
(2024).

**VOGEL, Senior Judge.**

Jordan Sanford appeals from the district court's finding that he is a sexually violent predator (SVP) under Iowa Code chapter 229A (2021). Sanford contends his trial counsel was ineffective in failing to object on both hearsay and confrontation grounds to references by the State's expert to his sexual misconduct as described in prison reports. We affirm.

**I. Background Facts and Proceedings**

In 2017, Sanford pleaded guilty to two counts of indecent exposure, a serious misdemeanor under Iowa Code section 709.9. While on probation for these convictions, Sanford reoffended and was charged with another count of indecent exposure. Due to the third offense, Sanford's probation was revoked, and he served one year in prison, during which he completed a five-month sex offender treatment program. Three months after his release in 2019, Sanford was charged a fourth time for similar indecent behavior. He returned to prison and began a second round of the sex offender treatment program. Two months into the program, Sanford was removed for disciplinary issues, namely his tendency to masturbate in view of female staff.

In March 2021, the State filed its petition to commit Sanford as an SVP under chapter 229A. At his ensuing bench trial in October 2021, the State called Dr. Amy Phenix as an expert to testify concerning Sanford's SVP status. In her report submitted at trial, Dr. Phenix concluded Sanford "is more likely than not to engage in predatory sexually violent offenses if not confined in a secure facility, as defined in [c]hapter 229A." The district court found Sanford is an SVP and ordered

him committed. He appeals, arguing his attorney was ineffective for failing to challenge the basis for Dr. Phenix's opinions.

## **II. Standard of Review**

We review ineffective-assistance-of-counsel claims de novo. *In re Det. of Blaise*, 830 N.W.2d 310, 315 (Iowa 2013). Sanford must prove both that his trial counsel failed to perform an essential duty and that prejudice resulted. *See id.*

## **III. Analysis**

An SVP is “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.” Iowa Code § 229A.2(13). In determining Sanford met this definition of SVP, Dr. Phenix relied, in part, on prison reports from the Iowa Department of Corrections regarding Sanford's disciplinary warnings and violations while he was incarcerated for repeatedly exposing himself to female employees. He argues his trial counsel was ineffective for failing to object to the use of these reports as impermissible hearsay and as violating his confrontation rights.

As an initial matter, the Iowa Supreme Court has never determined whether the right to effective assistance of counsel attaches to SVP proceedings. *See In re Det. of Crane*, 704 N.W.2d 437, 438–39 n.3 (Iowa 2005) (assuming without deciding the defendant has a right to effective assistance of counsel in a chapter 229A proceeding); *In re Det. of Willis*, 691 N.W.2d 726, 730 (Iowa 2005) (same). For the purposes of this appeal, we likewise assume without deciding Sanford has a right to effective assistance of counsel.

Even if we assume that Dr. Phenix's references to the prison reports are either hearsay or violate Sanford's confrontation rights and that trial counsel had a duty to object to such references, Dr. Phenix used the prison reports as part of identifying Sanford's pattern of exposing himself to females. Beyond these prison reports, Sanford has four criminal convictions for similar behavior since 2017. He also testified to the substance of these prison reports, admitting he was disciplined "[f]our or five times . . . for sexual misconduct," though he denied exposing himself. Therefore, even if his trial counsel had a duty to object to the expert's references to the prison reports, no prejudice resulted because substantially the same information was already in the record through other means. *See State v. Plain*, 898 N.W.2d 801, 813 (Iowa 2017) (finding evidence is not prejudicial when it is merely cumulative to other evidence that came into the record without objection).

Even if we assume Sanford's trial counsel had a duty to object on hearsay and confrontation grounds to references to his sexual misconduct in the prison reports, he cannot show prejudice resulted. Therefore, his ineffective-assistance-of-counsel claim fails, and we affirm the district court's ruling that Sanford is an SVP.

**AFFIRMED.**