

IN THE COURT OF APPEALS OF IOWA

No. 1-307 / 10-1640
Filed June 15, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DARNELL ALONZO GREEN,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Odell G. McGhee,
District Associate Judge.

A defendant challenges the district court's order directing him to serve
time in a county jail. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis D. Hendrickson,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant
Attorney General, John P. Sarcone, County Attorney, and Michael Salvner and
Ray Blase, Assistant County Attorneys, for appellee.

Considered by Vogel, P.J., Vaitheswaran, J., and Mahan, S.J.* Tabor, J.,
takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

VAITHESWARAN, J.

We must decide whether Darnell Green was to serve time in a county jail or in a facility run by the Iowa Department of Corrections.

I. Background Proceedings

Green pleaded guilty to assault causing bodily injury and second-degree harassment. He also stipulated to willfully violating a no-contact order and was found in contempt for that violation.

With respect to the criminal counts, the district court imposed 365-day jail terms, to be served concurrently. With respect to the violation of the no contact order and resulting contempt finding, the court ordered Green to spend 180 days in jail. The court further ordered that this 180-day jail term would be served consecutively to the jail sentences in the criminal matter, resulting in a total term of 545 days. Finally, the court ordered Green to serve the time in the Polk County Jail per “State v. Harlin [sic] Mott.” Green’s sole challenge is to this final portion of the district court’s order.

II. Analysis

Iowa Code section 903.4 (2009) provides in pertinent part that “[a]ll persons sentenced to confinement for a period of more than one year shall be committed to the custody of the director of the Iowa department of corrections to be confined in a place to be designated by the director” Conversely, anyone sentenced to confinement for a period of one year or less shall be confined in a place furnished by the county where the conviction was obtained. Iowa Code § 903.4. Where consecutive sentences are ordered, “the several terms shall be construed as one continuous term of imprisonment.” *Id.* § 901.8.

The district court relied on *State v. Mott*, 731 N.W.2d 392 (Iowa 2007) as authority for requiring Green to serve his time in the county jail. Mott was sentenced to one year in the county jail and “later ordered to consecutively serve an additional 150 days in a county jail as punishment for contempt committed during the trial on the assault charge.” *Mott*, 731 N.W.2d at 393. Mott contended the consecutive terms were one sentence under section 901.8, requiring commitment to the custody of the Iowa Department of Corrections pursuant to section 903.4. *Id.* The court disagreed, stating section 901.8 “only applies when a defendant is ordered to serve multiple terms of imprisonment as a consequence of *criminal offenses*.” *Id.* at 394. The court noted Mott’s contempt term was imposed under Iowa Code section 665.4 which refers to “punishment” rather than “sentence.” *Id.* Based on that distinction, the court reached the following conclusions:

We conclude section 901.8 is inapplicable in this case. Mott received one criminal sentence—a one-year term of imprisonment—for assault. He was subsequently “punished,” not “sentenced,” for contempt pursuant to section 665.4, which expressly prescribes “*punishment* for contempt.” Contempt proceedings are quasi-criminal, not criminal, in nature.

Because section 901.8 is inapplicable, the sentence for criminal assault and the punishment for contempt must be considered in isolation, not as “consecutive sentences” constituting “one continuous term of imprisonment.” Mott’s assault conviction resulting in a sentence of confinement for a period of one year must, under section 903.4, be served in the county jail. Mott must serve his separate punishment for contempt in the county jail, pursuant to section 665.4. Therefore, the district court correctly ordered Mott to serve all of the jail time in the county jail.

Id.

Green argues *Mott* is distinguishable. He notes that his contempt citation was pursuant to Iowa Code chapter 664A, which, unlike chapter 665, authorizes

the imposition of a “sentence” rather than “punishment.”¹ In his view, this word choice leads to a conclusion that a jail term imposed pursuant to chapter 664A is a criminal sentence. When served consecutively with his assault and harassment sentences, he insists this term became one continuous term of imprisonment under section 901.8, requiring commitment to the department of corrections.

While this argument is appealing at first blush, it ignores statutory language classifying a violation under section 664A.7 as contempt and making the violation “punishable by summary contempt proceedings.” Iowa Code § 664A.7(1). While a violation may alternately be classified as a simple misdemeanor, the court is afforded deference to choose between the criminal alternative or the contempt alternative. *Id.* § 664A.7(5).² In this case, there is no indication that the simple misdemeanor alternative was selected. In fact, the court-imposed punishment of a 180-day jail term is not consistent with the punishment authorized for a simple misdemeanor. See *id.* § 903.1(1)(a) (setting maximum sentence for a simple misdemeanor at thirty days). In short, the

¹ Section 664A.7(3) provides in relevant part:

If convicted of or held in contempt for a violation of a no-contact order or a modified no-contact order for a public offense referred to in section 664A.2, subsection 1, or held in contempt of a no-contact order issued during a contempt proceeding brought pursuant to section 236.11, the person shall be confined in the county jail for a minimum of seven days. A jail *sentence* imposed pursuant to this subsection shall be served on consecutive days.

(Emphasis added.)

² Section 664A.7(5) states:

Violation of a no-contact order entered for the offense or alleged offense of domestic abuse assault in violation of section 708.2A or a violation of a protective order issued pursuant to chapter 232, 236, 598, or 915 constitutes a public offense and is punishable as a simple misdemeanor. Alternatively, the court may hold a person in contempt of court for such a violation, as provided in subsection 3.

contempt punishment was not a criminal sentence that, when ordered to be served consecutively with the assault and harassment sentences, created one continuous term of imprisonment. As Green's 180-day term was a punishment for contempt rather than a criminal sentence, section 901.8 did not apply. See *Mott*, 731 N.W.2d at 394. Green's criminal sentence was for 365 days, making the Polk County Jail the appropriate facility to house him pursuant to Iowa Code section 903.4.

The district court did not err in requiring Green to serve his term in the county jail.

AFFIRMED.