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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1413**

In the Matter of the Civil Commitment of:
Craig Allen Bolte.

**Filed January 29, 2008
Affirmed
Dietzen, Judge**

Dakota County District Court
File No. P4-06-074

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Considered and decided by Dietzen, Presiding Judge; Lansing, Judge; and Ross, Judge.

UNPUBLISHED OPINION

DIETZEN, Judge

Appellant challenges the district court judgment indeterminately committing him as a sexually dangerous person, arguing that the district court's findings and conclusions are clearly erroneous. Because the district court properly applied the law and its findings are supported by clear and convincing evidence, we affirm.

FACTS

Appellant Craig Bolte was born in June 1987 and was 19 years of age at the time of the commitment hearing. In June 2006, a petition was filed seeking to civilly commit appellant as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP). Respondent later dismissed the petition for commitment as an SPP.

A. Prior History

In February 1993, appellant, who was five and one-half years of age at the time, was admitted into a hospital in Helena, Montana, after he smashed a child's fingers and threatened to set a house on fire. His parents noted that he had been sexually abused by his maternal uncle. He was also physically aggressive to his younger sister.

In February 2003, appellant, who was 15 years of age, was hospitalized in Billings, Montana after sexually propositioning an 11-year-old girl. When confronted by the girl's father, appellant threatened to kill him. During the time that appellant lived in Montana, he was charged with aggravated assault, armed robbery, and two counts of criminal mischief.

In March 2003, appellant was taken into custody at the Dakota County Juvenile Center after his 11-year-old sister reported that he had sexually abused her over the past two and one-half to three years. His sister reported that appellant had touched her sexually, digitally penetrated her vagina, and masturbated in front of her.

Appellant remained at the juvenile center about 74 days. During that time, he was evaluated by Dr. Roger Sweet who determined that appellant was competent to stand

trial. Dr. Sweet determined appellant to be on the higher end of the risk level for recidivism due to his extensive prior history.

Appellant pleaded guilty to one count of second-degree criminal sexual conduct, admitting that he had digitally penetrated his sister on at least two occasions. He was adjudicated on the charge and ordered to register as a sex offender and to complete the sex offender treatment program at Hennepin County Home School (HCHS) Juvenile Sex Offender Program.

While at HCHS, appellant was cited for, among other things, disorderly conduct, assault, engaging in sexually inappropriate behavior, accessing Internet erotic media, and malingering. Appellant received an unsatisfactory discharge from the treatment program.

In September 2003, appellant was transferred to the Benchmark Treatment Program, Juvenile Sex Offender Unit in Utah and remained at that location until March 2005. While at Benchmark, appellant made “intermittent progress with treatment” but later refused to continue to participate or work on any sex offender assignments. He was discharged for unsuccessful treatment.

In March 2005, appellant returned to the Dakota County Juvenile Court and was placed in the sex offender treatment program at Minnesota Correctional Facility-Red Wing. While at this facility, appellant received numerous incident reports and disciplines.

In April 2006, appellant’s probation officer, James Scovil, referred appellant for possible civil commitment. Following a screening evaluation, Dr. Sweet recommended petitioning for commitment of appellant as an SDP. Appellant was taken into custody

pending civil commitment. Dr. James Gilbertson, Dr. Peter Meyers, and Dr. Sweet were appointed to evaluate appellant for civil commitment.

B. The Commitment Hearing

The initial commitment hearing was held on January 25 and 26, 2007. Dr. Sweet testified that appellant has been in three sex offender treatment programs but has not succeeded in any of them, that he has a history of violence, and that he acts out when he cannot handle stress. Consequently, he would be a high risk in a community-based program. Dr. Sweet opined that appellant has manifested a borderline personality disorder, conduct disorder, and paraphilia; and that appellant's behavior is likely to continue in the future if he is not committed.

Dr. Gilbertson examined appellant in August 2006. During the clinical interview, appellant admitted that he sexually abused his 11-year-old sister on approximately 30 occasions and that he had sexual contact with a family friend's two minor sons. Appellant prepared a sexual offense history at Red Wing, listing 32 separate sexual contacts with peers ranging in age from six to 18. He admitted engaging in vaginal, anal, and digital penetration, sexual touching, fondling, "flashing," and mutual masturbation with males and females.

Dr. Gilbertson diagnosed appellant with (1) paraphilia: hypersexuality and non-consensual; (2) rule out pedophilia; (3) bipolar spectrum disorder; and (4) conduct disorder. Dr. Gilbertson considered the actuarial/test findings and concluded that "actuarial risk instruments that allow a specific percentage score . . . may not apply directly to [appellant]," and that "it is my opinion that [appellant] does evidence a risk to

re-offend that would be higher than the base rate of the average late adolescent population or young adult population to which he may be compared.” Dr. Gilbertson concluded that appellant met the criteria for SDP and that appellant is highly likely to engage in future sexual conduct. He gave 12 reasons for his opinion.

Dr. Meyers conducted a clinical interview of appellant in October 2006. He concluded that appellant did not meet all four criteria for SDP commitment. He diagnosed appellant with sexual abuse of a child, histrionic and antisocial personality disorder, and borderline personality disorder. He concluded that appellant shows only a moderate to moderate/high risk of future harmful sexual conduct and that his base rate for recidivism, figured on a juvenile scale, is 11%. He admits that his STATIC 99 test score, which was a five or six, is high, but points out that appellant was a juvenile at the time of the criminal sexual conduct and had not lived independently as an adult.

Dr. Sweet also filed a report which incorporated much of his earlier work regarding appellant. Dr. Sweet concluded that appellant met all the requirements for SDP commitment.

In February 2007, the court filed its findings of fact, conclusions of law, and order for commitment, initially committing appellant as an SDP, subject to a final determination pursuant to statute. The court ordered a 60-day treatment report be filed. Subsequently, the Minnesota Sex Offender Program’s (MSOP) treatment report was filed as required by law, the 60-day review hearing was conducted, and the court received into evidence the treatment report together with expert testimony from both Drs. Sweet and Gilbertson. At the conclusion of the hearing, the district court found that the statutory

requirements for civil commitment of appellant as an SDP continued to be met, that the MSOP placement was the most appropriate and least restrictive alternative available to provide confinement and, therefore, indeterminately committed appellant. This appeal follows.

D E C I S I O N

Appellant argues that the district court's decision determining that appellant is an SDP is clearly erroneous and not supported by clear and convincing evidence. Under the statute, the elements for civil commitment must be proven by clear and convincing evidence. Minn. Stat. § 253B.18, subd. 1(a) (2006) (applying clear-and-convincing-evidence standard to commitment petitions for persons who are mentally ill and dangerous); *see* Minn. Stat. § 253B.185, subd. 1 (2006) (providing generally that provisions relating to commitment of mentally ill and dangerous persons apply to commitment of sexually dangerous persons).

Findings of fact by the district court will not be reversed unless clearly erroneous. Minn. R. Civ. P. 52.01; *In re Joelson*, 385 N.W.2d 810, 811 (Minn. 1986). “Where the findings of fact rest almost entirely on expert opinion testimony, the [] judge’s evaluation of credibility is of particular significance.” *Id.* “The determination of whether the facts satisfy the statutory standard for civil commitment is a question of law subject to de novo review.” *In re Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006) (citing *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994) (*Linehan I*)), *review denied* (Minn. June 20, 2006).

A sexually dangerous person (SDP) is defined as a person who:

- (1) has engaged in a course of harmful sexual conduct as defined in subdivision 7a;
- (2) has manifested a sexual, personality, or other mental disorder or dysfunction; and
- (3) as a result, is likely to engage in acts of harmful sexual conduct as defined in subdivision 7a.

Minn. Stat. § 253B.02, subd. 18c(a) (2006). Under the third factor, the petitioner must prove by clear and convincing evidence that it is “highly likely” that the person will engage in harmful sexual acts in the future. *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*).

The first factor considers whether appellant “has engaged in a course of harmful sexual conduct.” Minn. Stat. § 253B.02, subd. 18c(a)(1). Harmful sexual conduct is defined as “sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another.” Minn. Stat. § 253B.02, subd. 7a(a) (2006). There is a rebuttable presumption that conduct described in the provisions defining criminal sexual conduct in the first through fourth degrees creates a substantial likelihood of serious physical or emotional harm. Minn. Stat. § 253B.02, subd. 7a(b) (2006). In addition to convictions, uncharged behavior may also be considered to establish a course of harmful sexual conduct. *Id.*; see *In re Monson*, 478 N.W.2d 785, 789 (Minn. App. 1991) (holding a course of sexual misconduct exists where multiple acts of sexual abuse occurred, although Monson had only one conviction for criminal sexual conduct).

The district court concluded that there was clear and convincing evidence that appellant “has engaged in a course of harmful sexual conduct.” The court credited the testimony of Dr. Gilbertson that appellant had digital and oral sexual contact with his

sister 30 times; fondled the daughter of his babysitter; and had oral sexual contact with a family friend's two minor sons. Further, appellant's delinquency conviction for second-degree criminal sexual conduct raises the presumption that there is a substantial likelihood that the victim sustained serious physical and/or emotional harm, which appellant has failed to rebut. The district court's conclusion was supported by the testimony of Drs. Gilbertson and Meyers.

The second statutory factor is that appellant "has manifested a sexual, personality, or other mental disorder or dysfunction." Minn. Stat. § 253B.02, subd. 18c(a)(2). The SDP statute was written with the aid of psychiatrists and psychologists and uses terminology employed by them as set forth in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (4th ed. 1994). *In re Linehan*, 557 N.W.2d 171, 185 (Minn. 1996) (*Linehan III*), *judgment vacated and remanded for reconsideration*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand*, 594 N.W.2d 867 (Minn. 1999).

The district court concluded that there was clear and convincing evidence that appellant has manifested sexual and personality disorders, particularly paraphilia, borderline personality disorder, conduct disorder, bipolar spectrum disorder, and possibly antisocial disorder. The district court's conclusion is supported by the testimony of Drs. Sweet, Gilbertson, and Meyers.

The third statutory factor requires that the petitioner prove that as a result of the first two statutory factors, the person is highly likely to engage in acts of harmful sexual conduct in the future. Minn. Stat. § 253B.02, subd. 18c(a)(3); *Linehan IV*, 594 N.W.2d at

876 (requiring that the likelihood of such acts be high). The supreme court has provided six factors for the district court to consider when determining if this factor is met. Those six factors are:

(a) the person's relevant demographic characteristics (*e.g.*, age, education, etc.); (b) the person's history of violent behavior (paying particular attention to recency, severity, and frequency of violent acts); (c) *the base rate statistics for violent behavior among individuals of this person's background (e.g., data showing the rate at which rapists recidivate, the correlation between age and criminal sexual activity, etc.)*; (d) the sources of stress in the environment (cognitive and affective factors which indicate that the person may be predisposed to cope with stress in a violent or nonviolent manner); (e) the similarity of the present or future context to those contexts in which the person has used violence in the past; and (f) the person's record with respect to sex therapy programs.

Linehan I, 518 N.W.2d at 614 (addressing psychopathic personality commitment) (emphasis added). The supreme court has applied these factors to the determination of future harm for commitment as an SDP as well. *Linehan III*, 557 N.W.2d at 189.

Appellant argues that the district court erred by crediting the testimony of Drs. Gilbertson and Sweet that adult base rate statistics are a more appropriate indicator of whether appellant is highly likely to reoffend than juvenile base rate statistics. Essentially, appellant argues that Drs. Gilbertson and Sweet relied exclusively on adult base rate statistics to support their conclusion of highly likely to reoffend, and, therefore, their opinions are clearly erroneous. We disagree.

Actuarial methods or base rates are not “the sole permissible basis for prediction;” instead, the six *Linehan* factors should be considered. *Id.*; see *In re Pirkl*, 531 N.W.2d

902, 909 (Minn. App. 1995) (upholding psychopathic personality commitment in which the district court did not consider base rate statistics, although the committed person did not base the challenge on that omission), *review denied* (Minn. Aug. 30, 1995). The “dangerousness prediction methodology is complex and contested.” *Linehan III*, 557 N.W.2d at 189.

Dr. Gilbertson did not rely exclusively on base rate statistics for his opinion; instead, he relied on all six factors of the highly likely standard. *See Linehan I*, 518 N.W.2d at 614 (listing factors). In fact, Dr. Gilbertson indicated that base rate statistics should be used cautiously with other data. With that caveat, he observed that “clinically aided forensic ratings” indicated that appellant “evidences a number of factors that have been empirically identified as linked to future sexual recidivism.” Similarly, Dr. Sweet’s testimony indicates that he did not rely heavily on the adult base rate statistics. Thus, appellant’s argument lacks merit.

We have carefully reviewed the record and conclude that the district court’s conclusion that appellant is highly likely to engage in acts of harmful sexual conduct in the future is supported by clear and convincing evidence.

Affirmed.