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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-2110**

In the Matter of the Civil Commitment of:  
Ryan James Mely

**Filed April 27, 2010  
Affirmed  
Halbrooks, Judge**

Ramsey County District Court  
File No. 62-MH-PR-08-50

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Considered and decided by Lansing, Presiding Judge; Halbrooks, Judge; and Connolly, Judge.

**UNPUBLISHED OPINION**

**HALBROOKS**, Judge

Appellant Ryan James Mely challenges the district court's conclusion that he meets the definition of a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP). He also contends that the district court failed to properly consider less-restrictive alternatives prior to his indefinite commitment. Because we conclude that

Mely meets the definitions of an SDP and an SPP and that the district court properly considered whether a less-restrictive alternative is available for Mely, we affirm.

## **FACTS**

Mely is a 25-year-old man with a criminal sexual history dating back almost ten years. In 2001, Mely was adjudicated delinquent for invasion of privacy for habitually peeping in his neighbor's window. Mely claims to have peeped at the same victim over 300 times. He would typically masturbate to ejaculation while, or shortly after, peeping at her. He was placed on probation after this 2001 adjudication, but he soon reoffended. After a second adjudication for invasion of privacy, it was recommended that Mely attend sex-offender treatment. But the program to which he was referred rejected Mely because of his high risk to reoffend.

In 2004, Mely sexually assaulted a 12-year-old girl in St. Paul. The assault for which he was convicted was one of several similar incidents that occurred in St. Paul within a relatively short period of time, and Mely admitted to his involvement in one such incident. The assault for which Mely was convicted consisted of Mely approaching the victim on the street, grabbing her, pulling her shorts down, and touching her bare vagina. He also attempted to drag the victim toward his car. But she struggled with him, and eventually Mely was interrupted by concerned neighbors. At that point, Mely fled in his car but pulled over a few blocks away to masturbate. He later stated that had he not been interrupted, he intended to have sex with the girl.

After a phone tip led the police to him, Mely pleaded guilty to second-degree criminal sexual conduct and was sentenced to 42 months, stayed execution, with 25 years

probation. One of the conditions of his probation was to complete sex-offender treatment at Alpha Human Services Residential Program. But in July 2005, Mely was terminated from the Alpha program for refusing to admit the assault, and his sentence was executed. In 2007, Mely was placed on intensive supervised release and was held at the Minnesota Sex Offender Program (MSOP). Respondent Ramsey County began the process to have Mely civilly committed at that time, but dismissed its petition when Mely was sent back to prison for disciplinary incidents at MSOP. Ramsey County reinitiated its petition in 2008, prior to Mely's scheduled release.

Mely was evaluated by three psychologists as part of Ramsey County's petition to civilly commit Mely as an SDP and an SPP. During at least one evaluation, Mely admitted to rape fantasies with children. Each expert recommended Mely's commitment as an SDP and SPP. Following the initial civil-commitment trial, the district court concluded that Mely meets the statutory definitions of an SDP and an SPP. At the 60-day review hearing, the district court concluded that there had been no changes in Mely's condition and ordered that he remain committed indefinitely. This appeal follows.

## **D E C I S I O N**

A petitioner seeking to commit a person must prove the facts necessary for commitment by clear and convincing evidence. Minn. Stat. §§ 253B.18, subd. 1(a), .185, subd. 1 (2008). This court applies a clearly erroneous standard of review to the district court's factual findings. *In re Joelson*, 385 N.W.2d 810, 811 (Minn. 1986). But we apply a de novo standard of review to the issue of whether the facts satisfy the statutory criteria for commitment. *In re Commitment of Martin*, 661 N.W.2d 632, 638 (Minn.

App. 2003), *review denied* (Minn. Aug. 5, 2003). Mely argues that the initial criteria supporting the conclusion that he meets the definitions of an SDP and an SPP were not met in this case; he does not argue that anything changed between his initial commitment and the 60-day review hearing.

#### **A. SDP**

To support commitment of a person as an SDP, the petitioner must show by clear and convincing evidence that the person: (1) “has engaged in a course of harmful sexual conduct”; (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.” Minn. Stat. § 253B.02, subd. 18c(a) (2008). The petitioner is not required to prove an inability to control sexual impulses. *Id.*, subd. 18c(b) (2008).

Regarding his commitment as an SDP, Mely claims that he did not engage in a course of harmful sexual conduct, and therefore he does not meet the first part of the SDP definition. “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) (2008). A “course” of harmful sexual conduct is defined by its ordinary meaning, which is “a systematic or orderly succession; a sequence.” *In re Commitment of Ramey*, 648 N.W.2d 260, 268 (Minn. App. 2002) (quotation omitted), *review denied* (Minn. Sept. 17, 2002). Mely does not challenge the district court’s conclusion that the state proved by clear and convincing evidence that he engaged in a course of sexual conduct. Nor does he contest the fact that his conviction for second-degree sexual assault carries with it a rebuttable presumption of harm. *See* Minn. Stat.

§ 253B.02, subd. 7a(b) (2008). Instead, Mely argues that his behavior cannot meet the definition of a “course” of “harmful” sexual conduct because his first two convictions were for window peeping, which he contends does not result in harm to the victim. Mely asserts that “[i]nterfering with one’s privacy should not be considered comparable to harming one’s person.” He then claims that without these convictions, there is no course of harmful sexual conduct.

With respect to the harm caused by Mely’s window peeping, the district court found that “petitioner has shown by clear and convincing evidence that [the victim] suffered serious emotional harm as a result of these offenses.” This finding is supported by the victim’s testimony. At Mely’s initial commitment trial, the victim testified that “[she] felt like a prisoner in [her] own home. . . . [She] felt like [Mely] was going to come in and rape [her] or [her] child.” In light of this testimony, we cannot conclude that the district court’s finding that the victim suffered serious emotional harm because of Mely’s conduct is clearly erroneous. The statutory definition of “harmful sexual conduct” includes sexual conduct that causes emotional harm. Minn. Stat. § 253B.02, subd. 7a(a). We therefore conclude that invasion of privacy is harmful sexual conduct because it is sexual conduct that carries with it the substantial likelihood of serious emotional harm. Because the district court’s finding that Mely’s victim suffered emotional harm from Mely’s window peeping is not clearly erroneous and because this finding supports the conclusion that Mely engaged in a course of harmful sexual conduct, we agree that Mely meets the statutory definition of an SDP.

## **B. SPP**

Mely also argues that he does not meet the definition of an SPP. A person meets the definition of an SPP when there is

the existence . . . of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters, if the person has evidenced, by a habitual course of misconduct in sexual matters, an utter lack of power to control the person's sexual impulses and, as a result, is dangerous to other persons.

Minn. Stat. § 253B.02, subd. 18b (2008). Mely again asserts that because his window peeping did not harm anyone, his behavior could not be considered a “habitual course of misconduct in sexual matters.” This argument has no merit. Although the term “misconduct” is not defined, we conclude that any behavior that could result in a criminal conviction—such as Mely’s window peeping—is within the definition of the term “misconduct.” Because Mely’s sole objection to his characterization as an SPP is without merit, we affirm his commitment as an SPP.

## **C. Less-Restrictive Alternative**

Finally, Mely argues that the district court erred in finding that there is no less-restrictive alternative to commitment available to him. If a district court finds that an offender is an SDP or an SPP, the district court must commit the person to a secure treatment facility “unless the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient’s treatment needs and the requirements of public safety.” Minn. Stat. § 253B.185, subd. 1.

This court will not reverse a district court's findings on the propriety of a treatment program unless its findings are clearly erroneous. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

Mely argues that he

cannot make a showing of an alternative because the State will not approve or fund any such program. There is no option for persons committed under this statute because there is no program. In the absence of any such program [he] is effectively denied this opportunity which the statute provides.

The district court specifically noted in its initial commitment order that all three experts testified that "the only treatment option is the [MSOP] in Moose Lake and St. Peter." In the district court's order for indeterminate commitment, it found that "[t]he MSOP is the appropriate and least restrictive alternative available for confinement, care and treatment of [Mely]." The record contains evidence that Mely was rejected by one less-restrictive treatment facility and terminated from another. Clearly Mely is aware that other less-restrictive treatment facilities exist, but he nevertheless failed to meet his burden of proof that there is one that can both meet his needs and account for public safety. Accordingly, the district court did not err when it committed Mely indefinitely to MSOP as an SDP and an SPP.

**Affirmed.**