STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1813

In the Matter of the Civil Commitment of:
Grady Ladonn Williams

Filed March 11, 2008
Affirmed
Toussaint, Chief Judge

Anoka County District Court
File No. P5-04-4750

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Considered and decided by Toussaint, Chief Judge; Peterson, Judge; and Willis, Judge.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Chief Judge

Grady Ladonn Williams appeals the 2005 order initially committing him and the 2007 order indeterminately committing him to treatment in the Minnesota Sex Offender Program as a sexually dangerous person (SDP). Because (1) clear and convincing

evidence supports the district court's orders for initial and indeterminate commitment, (2) the district court's determination that the Minnesota Sex Offender Program is the least-restrictive alternative is not clearly erroneous, and (3) the statutes were constitutionally applied to appellant, we affirm.

FACTS

Appellant, now 44, has been convicted three times for criminal sexual conduct, all convictions involving sexual intercourse with minor females. In 1995, appellant was convicted of third-degree criminal sexual conduct for having sexual intercourse with a 15-year-old female. In 1999, while he was on parole for the 1995 offense, appellant was convicted of third-degree and fourth-degree criminal sexual conduct based on an *Alford* plea for having forcible sexual intercourse with two 13-year-old females.

In 2004, Anoka County Human Services petitioned for the civil commitment of appellant, alleging that he is an SDP and a sexual psychopathic personality. On December 2, 2005, the district court initially committed appellant as an SDP but dismissed the allegation that he is a sexual psychopathic personality. On May 18, 2007, after a review hearing, the district court indeterminately committed appellant to treatment in the Minnesota Sex Offender Program as an SDP, based on the court-appointed examiners' determinations that appellant continued to meet the statutory criteria for commitment as an SDP and based on evidence of new sexual conduct that appellant had engaged in while residing at the security hospital awaiting his review hearing.[1]

[1] Appellant had made over 430 sexually-explicit phone calls to now-former female employees of the security hospital while residing there. Appellant had also asked the

Appellant challenges the orders initially and indeterminately committing him as an SDP, arguing that (1) the evidence is insufficient to prove that he is highly likely to reoffend, (2) his current in-prison treatment program is an adequate, less-restrictive alternative to commitment, and (3) the statute allowing him to show there is a less-restrictive alternative is unconstitutional and impossible of execution.

D E C I S I O N

I.

"We review de novo whether there is clear and convincing evidence in the record to support the district court's conclusion that appellant meets the standards for commitment." *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003). This court defers to the district court's role as factfinder and its ability to judge the credibility of witnesses. *In re Ramey*, 648 N.W.2d 260, 269 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002). "Where the findings of fact rest almost entirely on expert testimony, the trial court's evaluation of credibility is of particular significance." *Thulin*, 660 N.W.2d at 144 (quotation omitted).

A district court will commit a person as an SDP if the person meets the criteria for commitment by clear and convincing evidence. Minn. Stat. §§ 253B.18, subd. 1(a), subd. 1 (2006). An SDP is one who: (1) "has engaged in a course of harmful sexual conduct;" (2) "has manifested a sexual, personality, or other mental disorder or dysfunction;" and (3) "is likely to engage in acts of harmful sexual conduct." Minn. Stat. § 253B.02, subd.

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women to send him contraband sleeping pills and to help him escape. As a result, appellant was convicted of conspiracy to bring contraband into the security hospital and sentenced to prison for an additional year and a day.

18c(a) (2006). The statute requires a showing that the person's disorder does not allow him to adequately control his sexual impulses. *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*).

Appellant challenges the district court's determination that he is highly likely to engage in future acts of harmful sexual conduct. The statutory phrase "likely to engage in acts of harmful sexual conduct" means that the person is "highly likely" to engage in harmful sexual conduct in the future. *In re Linehan*, 557 N.W.2d 171, 180 (Minn. 1996) (*Linehan III*), *vacated on other grounds*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand*, 594 N.W.2d 867 (Minn. 1999). The supreme court has set forth six factors to be considered in examining the likelihood of reoffense: (1) the offender's demographic characteristics; (2) the offender's history of violent behavior; (3) the base-rate statistics for violent behavior among individuals with the offender's background; (4) the sources of stress in the offender's environment; (5) the similarity of the present or future context to those contexts in which the offender used violence in the past; and (6) the offender's record of participation in sex-therapy programs. *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994) (*Linehan I*).

Appellant argues that the district court only relied on the base-rate statistics factor in determining that he is highly likely to reoffend and should have addressed the remaining five factors as well. But the district court made findings based on the court-appointed examiners' testimony and their detailed reports. Contrary to appellant's claim, the examiners did not rely primarily on statistics; their reports indicate that all *Linehan* factors were addressed and considered in their analyses. The following factors indicate

that appellant remains highly likely to reoffend sexually.

Appellant contends that because it has been eight years since he committed his last sexual offense, his advancing age and maturity are mitigating factors in reducing his likelihood of reoffense. In his report, one of the court-appointed examiners wrote that appellant "appears to have a higher than average sexual arousal and drive" despite his advancing age. Furthermore, appellant continued to engage in inappropriate sexual behavior in the recent past, even while residing in a secure facility, and presented himself as much younger than he actually was when assaulting the two 13-year-olds in 1999.

Appellant argues that his previous sexual offenses did not involve the use of force. The district court found that appellant's sexual assaults included force, threats of force, and violence to the point of creating serious harm in the victims. These findings are supported by one of the court-appointed examiners report, wherein he found that appellant "has, at times, been physically threatening, coercive and has utilized alcohol to effect his sexual agenda. It is my opinion that his sexual offenses have involved violence." Even if appellant did not use force to perpetrate the 1995 sexual offense (the jury determined that he did not), victim interviews contained in the record indicate that appellant used force when having intercourse with his victims in 1999, and all three victims suffered serious emotional harm after being assaulted by appellant.

The district court found that appellant is highly likely to reoffend based partly on the examiners' analyses of actuarial tests, and the record supports the examiners' conclusions. Appellant alleges that the actuarials are "flawed in their design" and that their results were "based on facts not in evidence, such as the use of force alleged but not

proven." This argument is not supported by evidence or authority, and nothing in the record indicates that the examiners relied upon false facts when conducting the tests.

Appellant argues that he is "supported by his family which forms an extensive network," and the record generally supports this assertion, even though his family members are scattered throughout the country. But nothing in the record indicates that appellant himself is properly equipped to deal with the stressors he would face if released, and in the past, he has continually turned to drugs and alcohol to cope.

Appellant alleges that he "is not in the same context as when he last offended" because he has completed chemical dependency treatment and will complete sex offender treatment. Even after completing chemical dependency treatment, appellant continued to later violate his probation by using drugs and alcohol. Appellant has not completed sexual offender treatment, and because of that the record supports the examiner's opinion that appellant's lifestyle upon release would be "similar to those conditions that did not allow his success on conditional release."

Appellant argues that there is "no evidence to suggest that [he] will not follow through" with sex offender treatment. But due to appellant's numerous past failures in sex offender treatment, and his lack of empathy and insight into his behaviors, there is also no evidence to suggest that he will follow through with treatment.

The district court did not err in relying on the examiners' opinions, based on the above *Linehan* factors, that appellant is highly likely to engage in harmful sexual conduct in the future. Considering the record, the district court's determination that appellant is highly likely to reoffend is supported by clear and convincing evidence.

Appellant has engaged in a course of harmful sexual conduct, has manifested a sexual, personality, or other mental disorder or dysfunction, and is likely to engage in future acts of harmful sexual conduct. Appellant's disorder does not allow him to adequately control his sexual impulses, even while confined, and the risk to public safety would be great were appellant to be released into the community following his release from prison. Clear and convincing evidence supports the district court's orders for initial and indeterminate commitment.

II.

Appellant challenges his commitment to the sex offender program at a state hospital on the ground that it is not the least-restrictive alternative, arguing that he is currently enrolled in a less-restrictive sex offender treatment program while in prison. This court reviews a district court's determination of the least-restrictive alternative under the clearly erroneous standard. *Thulin*, 660 N.W.2d at 144.

"Under the current statute, patients have the *opportunity* to prove that a less-restrictive treatment program is available, but they do not have the *right* to be assigned to it." *In re Kindschy*, 634 N.W.2d 723, 731 (Minn. App. 2001), *review denied* (Minn. Dec. 19, 2001). The commitment statute provides that "the Court shall commit the patient 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 (2006).

Appellant has not established that a less-restrictive treatment program that is consistent with his treatment needs and the requirements of public safety is available. Both examiners who testified at the review hearing took into account the fact that appellant had enrolled in the less-restrictive treatment program but opined that his treatment would not be complete if he did not attend the sex offender program at a state hospital following his release from prison. Having heard two examiners testify that no less-restrictive alternative, and specifically not treatment in prison, would be appropriate for appellant, the district court did not err in committing appellant to the sex offender program at a state hospital.

III.

Minnesota statutes are presumed constitutional and will not be declared unconstitutional unless absolutely necessary. *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989). This court reviews constitutional challenges de novo. *State v. Johnson*, 689 N.W.2d 247, 253 (Minn. App. 2004), *review denied* (Minn. Jan. 20, 2005).

Appellant argues that treatment at Alpha Human Services is a less-restrictive alternative based on the examiners' opinions at the initial hearing that appellant did not require treatment in a secure facility. Because Alpha does not accept applicants who are being petitioned for commitment, appellant argues that the commitment statute is impossible as to execution because it provides for a less-restrictive alternative that is not

available to offenders who are subject to a petition for commitment under its authority.[2]

The examiners initially indicated that appellant would not require treatment in a secure facility and could be treated at a facility such as Alpha. But at the review hearing, the examiners testified that appellant will only receive complete sex offender treatment if he is committed to a secure facility following his release from prison, especially considering that appellant continued to prove unable to control his sexual impulses while residing at the security hospital. The commitment statute providing for the least-restrictive alternative is not impossible of execution because Alpha is no longer recommended by the examiners.

Appellant also claims that double jeopardy is invoked because he is undergoing preventative detention. The supreme court has rejected the argument that commitment under the SDP statute violates double jeopardy. *Linehan IV*, 594 N.W.2d at 871-72 (addressing double jeopardy challenge to SDP statute). Civil commitment does not violate the prohibition against double jeopardy because it is remedial, and its purpose is treatment rather than punishment. *Call v. Gomez*, 535 N.W.2d 312, 319-20 (Minn. 1995).

Affirmed.

[2] As a threshold matter, this issue is not properly before the panel because it was not presented to the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). We nevertheless address it in the interest of completeness.