STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1892

In the Matter of the Civil Commitment of:
Jeremy Neil Bartholomew a/k/a Jeremy Neil Kienert

Filed April 1, 2008
Affirmed
Toussaint, Chief Judge

Mower County District Court
File No. 50-PR-07-1853

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Kristen M. Nelsen, Mower County Attorney, 201 First Street Northeast, Austin, MN 55912 (for respondent State of Minnesota)

Considered and decided by Toussaint, Chief Judge; Hudson, Judge; and Worke, Judge.

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

TOUSSAINT, Chief Judge

Appellant Jeremy Neil Bartholomew, a/k/a Jeremy Neil Kienert, challenges his commitment as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP) on the ground that the district court made insufficient findings. Because the

district court made extensive findings that support the commitment and are not clearly erroneous, we affirm.

FACTS

Appellant was born in 1975. He began committing acts of sexual abuse in 1991. The district court made findings as to each of his eight victims.

The first was his half-sister, A.M.H., whom he assaulted when he was 15 and she was 11. The district court found that appellant sexually assaulted her on several occasions between May and July 1991; that he admitted the assaults to the police; and that he later admitted grooming A.M.H. for the assaults.

Appellant's next victim was B.A.R., 13, with whom appellant had sexual contact in June 1991. The district court found that he admitted to police that he touched her genital area.

The district court found that, at trial, appellant admitted sexually abusing his half-sister, K.K.H., when she was about eight and he was 17 or 18, and that, as with A.M.H., appellant believed that she found his sexual contact painful.

The district court found that, when appellant was 22, he sexually assaulted an adult female, A.H., and that appellant told one doctor that he did not rape A.H. but later told another doctor that he did rape her.

Another victim was M.L.M. The district court found that she had reported that appellant sexually abused her about 12 times beginning when she was seven or eight and ending when she was about 15, that appellant at first denied the abuse but admitted to it during sex-offender treatment, and that he said he knew at the time that the sexual contact

was wrong because he was older than M.L.M.

In 2002, when appellant was 26, he engaged in sexual contact with T.M.B., 13. The district court found that appellant told the police he had not touched or kissed T.M.B., that he admitted in sex-offender treatment that he had touched her, and that at trial he again denied touching her.

In 2003, appellant had forced sexual intercourse with V.B.W., then 19, who was living with appellant, his wife, and his stepson. The district court found that appellant's wife became ill and had to go to the hospital, that after she had left appellant hit the stepson, that, when V.B.W. returned to bring the stepson to the hospital, appellant tied her hands, placed a pocket knife against her throat, and raped her, and that appellant first denied having sex with V.B.W. on that date but later admitted to having consensual sex with V.B.W.

Also in 2003, appellant had sexual contact with A.M.B., then 21. The district court found that appellant admitted he had touched her breasts and tried to get her to have sex, but she refused, and that he did not feel he had done anything wrong.

The district court found further that appellant began outpatient sex-offender treatment at Riverside Psychological Services in August 2004 but was terminated in January 2006 because he had failed to make adequate progress in showing he could adjust to the community and was not a risk to re-offend.

The district court also found that appellant received sex-offender treatment at Safety Center, Inc., in March and April 2006, that his probation agent stated that appellant had recently reported rape fantasies about a neighborhood girl, 15, whom he

had "already chosen [as] his next victim," and that he was discharged because he was not an appropriate candidate for outpatient treatment.

Appellant was admitted to the Minnesota Correctional Facility in St. Cloud and recommended for sex-offender programming. He was transferred to the Minnesota Correctional Facility in Moose Lake in August 2006 and, after an assessment, assigned a risk level of III, which he accepted. He was examined by two court-appointed examiners, Dr. Rosemary Linderman and Dr. Harry Hoberman, both of whom submitted reports recommending a residential, long-term, secure, and intensive sex-offender treatment program for appellant.

The district court ordered his commitment as an SDP and an SPP, and appellant challenges this order.

D E C I S I O N

The district court's findings support the conclusions that appellant is both an SPP and an SDP. An appellate court will uphold the district court's findings if they are not clearly erroneous and will give due regard to the district cout's credibility determinations. Minn. R. Civ. P. 5201; *see, e.g., In re Joelson*, 385 N.W.2d 810, 811 (Minn. 1986); *In re Preston*, 629 N.W.2d 104, 110 (Minn. App. 2001).

One who is an SPP has conditions of emotional instability, impulsive behavior, lack of ordinary good judgment, or failure to appreciate the consequences of acts, or a combination of any of these conditions, to a degree that renders the individual irresponsible for personal sexual conduct if a habitual course of the individual's sexual misconduct shows an utter lack of power to control sexual impulses resulting in the

individual's dangerousness to others. Minn. Stat. § 253B.02, subd. 18b (2006).

One who is an SDP has engaged in a course of harmful sexual conduct, has shown a sexual, personality, or other mental disorder or dysfunction, and is therefore likely to engage in further acts of harmful sexual conduct. Minn. Stat. § 235B.02, subd. 18c (2006). "Harmful sexual conduct" means "sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another." Minn. Stat. § 253B.02, subd. 7a (2006). "Likely" in this context means "highly likely." *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). Moreover, to be committed as an SDP, an individual must lack adequate control of his sexual impulses. *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*). The lack-of-adequate-control standard for SDP commitment is less stringent than the utter-lack-of-control standard for SPP commitment. *Id.* at 875-876.

First, appellant argues that the district court did not properly weigh the testimony of the court-appointed examiners. Both examiners recommended appellant's commitment as an SPP and an SDP, and the district court followed their recommendation. Appellant correctly asserts that the district court is not obligated to follow examiners' recommendations (whether or not they are identical) but offers no support for his argument that the court should not follow such recommendations because then "the court's involvement [in the commitment] would be unnecessary."

The district court's findings show that it carefully evaluated the experts' testimony. *See, e.g.*, "The Court finds Dr. Linderman's testimony concerning this

[MMPI-2] testing [appellant's MMPI-2)] to be credible"; "Dr. Linderman's testimony and report are credible in all respects, and the Court accords them substantial weight in this matter"; "The Court finds the testimony and reports [characterizing appellant] of Dr. Linderman and Dr. Hoberman to be persuasive and accords them considerable weight in this matter"; "The court also finds Dr. Hoberman's and Dr. Linderman's testimony and opinions concerning [appellant's] habitual course of harmful sexual conduct credible and persuasive"; "The court finds the testimony of Drs. Hoberman and Linderman regarding [appellant's] sexual, personality, and other mental disorders persuasive"; "The court finds the testimony and opinions of Dr. Hoberman and Dr. Linderman concerning these four conditions [emotional instability, impulsiveness of behavior, lack of customary standards of good judgment, failure to appreciate the consequences of personal acts] credible and persuasive"; and "The court finds Dr. Hoberman's and Dr. Linderman's testimony and opinions to be credible and persuasive concerning [appellant's] utter lack of power to control his sexual impulses"; "On the issue of [appellant's] likelihood of re-offense, the court finds the opinions and testimony of Dr. Hoberman and Dr. Linderman credible and persuasive"; "The Court finds Dr. Linderman's and Dr. Hoberman's opinions about the level of secure treatment needed for [appellant] persuasive."

The district court's findings support its decision to follow the examiners' recommendations to commit appellant. Appellant's argument that the district court did not properly weigh the testimony of the examiners is without merit because their testimony and reports are part of the clear and convincing evidence supporting appellant's commitment.

Second, appellant argues that the state failed to prove that he cannot control his harmful sexual behavior because his practice of delaying sexual abuse while he groomed his victims demonstrates that he could control that behavior. But grooming is an element of a lack of power to control sexual impulses. *In re Bieganowski*, 520 N.W.2d 525, 529-30 (Minn. App. 1994), *review denied* (Minn. Oct. 27, 2994).

> The similarities between the incidents of sexual activity with children reveal a habitual pattern of "grooming" victims, developing a relationship with victims before becoming sexually involved with them. Although the "grooming" process requires time, thus eliminating any "suddenness" regarding the sexual activity, the habitual nature of appellant's predatory sexual conduct indicates an inability to stop the "grooming" behavior.

Id. at 530. In any event, appellant did not groom his adult victims or all of his child victims. Therefore, he cannot argue that his grooming of victims means he does not lack control of his sexual impulses.

The district court's findings are not clearly erroneous and support appellant's commitment as an SDP and an SPP.

Affirmed.