STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1916

In the Matter of the Civil Commitment of Al Stone Folson

Filed April 1, 2008
Affirmed
Toussaint, Chief Judge

Ramsey County District Court
File No. 62-MH-PR-06-267

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

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

TOUSSAINT, Chief Judge

Appellant Al Stone Folson challenges the district court's determination that he continues to be a sexually dangerous person (SDP), with no less-restrictive alternative than indeterminate commitment. Because the district court did not abuse its discretion in admitting appellant's juvenile records in this civil-commitment proceeding, and because

the evidence clearly and convincingly shows that appellant has engaged in a course of harmful sexual conduct and that he is highly likely to reoffend by engaging in harmful sexual conduct, we affirm.

D E C I S I O N

This court reviews "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); *see* Minn. Stat. §§ 253B.18, subd. 1(a), .185, subd. 1 (2006). An SDP is defined as a person 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) as a result, is likely to engage in acts of harmful sexual conduct." Minn. Stat. § 253B.02, subd. 18c(a) (2006); *see also In re Linehan*, 557 N.W.2d 171, 180 (Minn. 1996) (*Linehan III*) (commitment as SDP also requires that person is highly likely to engage in acts of harmful sexual conduct), *vacated on other grounds*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand*, 594 N.W.2d 867 (Minn. 1999); *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*) (commitment as SDP also requires that person lacks adequate control of sexual impulses).

I.

In the fact section of his brief on appeal, appellant states that he "objects" to the admission of his juvenile records. But appellant does not fully address this issue on appeal. If a party fails to provide any authority or argument to support a claim, we may deem the claim waived. *See McKenzie v. State*, 583 N.W.2d 744, 746 n.1 (Minn. 1998)

(appellant who "allude[d]" to certain issues in his brief waived those issues by failing to address them in argument portion of his brief).

In any event, the decision "whether to admit or exclude evidence is within the district court's discretion and will be reversed only if the court has clearly abused its discretion." *In re Civil Commitment of Ramey*, 648 N.W.2d 260, 270 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002). At the initial commitment hearing and in its initial order, the district court noted and rejected appellant's objection to the admission of his juvenile records. The district court reasoned that portions of appellant's juvenile record were admissible because they contained evidence relevant to his history and background, which was considered by the examiners in reaching their opinions. *See* Minn. R. Evid. 402, 705. It would have been impossible for the examiners to complete a thorough analysis of the necessary factors without access to appellant's entire history, including his juvenile history. *See In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994) (*Linehan I*) (setting out criteria for commitment under SDP statute, which includes demographic characteristics, history of violent behavior, base-rate statistics, sources of stress in environment, similarity of present and past uses of violence, and person's record of sex-therapy programs). The district court did not abuse its discretion in allowing this evidence to be considered.

II.

Appellant argues that his past history does not constitute a course of harmful sexual conduct because it consists of only two stranger rapes that occurred in 1994 and

1998, when he was 15 and 18 years old. He asserts that the other delinquent behaviors he committed before 1994 were not proved to be sexually motivated and should not be considered. Those behaviors included an incident on a school bus when appellant was 12 years old and threatened two younger girls with a knife, and an incident when he was 14 years old in which he set fire to a residential garage, allegedly after his sexual advances were rebuffed by the young girl who lived at the residence.

Appellant further asserts that while he admitted that the two rapes were harmful sexual conduct, his young age and lack of maturity at the time of those offenses should somehow minimize or excuse their harmfulness.[1] He asserts that he went four years without committing another offense, despite receiving no consequences or punishment after the 1994 offense because he was not punished until DNA testing from the 1998 offense identified him as the perpetrator.

The statute does not define "course" or specify the number of offenses necessary to constitute a "course." *Ramey*, 648 N.W.2d at 268. This court has defined "course" as a "systematic or orderly succession; a sequence." *In re Civil Commitment of Stone*, 711 N.W.2d 831, 837 (Minn. App. 2006) (quotation omitted), *review denied* (Minn. June 20, 2006). This court has further stated that "examination of whether an offender engaged in

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[1] Appellant admitted on the record at his initial commitment hearing that his behavior meets the definition of "harmful sexual conduct." He did not offer any evidence to rebut the statutory presumption that his conduct was harmful sexual conduct. *See* Minn. Stat. § 253B.02, subd. 7a(a) (2006) (defining "harmful sexual conduct" as "sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another"), subd. 7a(b) (2006) (allowing rebuttable presumption that criminal sexual conduct in first to fourth degrees creates substantial likelihood that victim will suffer serious physical or emotional harm).

a course of harmful sexual conduct takes into account both conduct for which the offender was convicted and conduct that did not result in a conviction." *Id.*

Here, the district court concluded that appellant's two offenses met the definition of a "course of conduct." The fact that appellant committed his first offense when he was a juvenile is immaterial and does not minimize the offense. Even though appellant was not immediately incarcerated for his 1994 offense, he was in and out of various juvenile treatment and rehabilitation programs during that time for other antisocial or criminal conduct. Thus, the gap in time between appellant's offenses does not preclude a finding that those acts constituted a "course." *See id.*, 711 N.W.2d at 838; *In re Robb*, 622 N.W.2d 564, 573-74 (Minn. App. 2001), *review denied* (Minn. Apr. 17, 2001).

Finally, as the district court concluded, appellant's offenses were "random, violent and reckless," with the second offense being even more violent than the first. Thus, clear and convincing evidence supports the district court's determination that appellant has engaged in a course of harmful sexual conduct.

III.

Appellant argues that the evidence is insufficient to show that he is highly likely to reoffend with harmful sexual conduct.[2] He claims that the examiner he called to testify was unable to conclude to a reasonable degree of medical certainty that he was highly likely to reoffend in a sexual manner. He further claims that, while the same examiner agreed that appellant was likely to reoffend, the examiner also opined that his future

[2] Appellant does not challenge the district court's conclusion that he meets the second SDP criteria because he agrees that he manifests a sexual, personality, or other mental disorder or dysfunction. *See* Minn. Stat. § 253B.02, subd. 18c.

criminal offenses may or may not be of a sexual nature. Appellant concedes that while the evidence supports finding that he is at risk for offending again in some manner, it does not prove that he is highly likely to engage in harmful sexual conduct.

But the district court's determination is amply supported by the opinions of the other two court-appointed examiners, both of whom testified at the review hearing that they continued to believe that appellant meets the criteria for commitment as an SDP. The district court's determination is also supported by the report prepared by the staff at the Minnesota Sexual Offender Program, who conclude that appellant's risk factors place him at high risk for sexual reoffense. Thus, clear and convincing evidence supports the district court's determination that appellant is highly likely to engage in further harmful sexual conduct.

Finally, while the examiner called by appellant suggested that he could be treated on an outpatient basis, even that examiner acknowledged that he was not aware of any treatment program that could provide appellant with the intense supervision needed. One of the court-appointed examiners stated that appellant was unlikely to benefit from sex-offender treatment and suggested that he "may in fact learn how to be more manipulative of other people." Both court-appointed examiners testified that appellant is not a good candidate for any type of outpatient treatment program. Clear and convincing evidence in the record supports the district court's determination that appellant continues to be a SDP, with no less-restrictive alternative than indeterminate commitment.

Affirmed.