STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2069

In the Matter of the Civil Commitment of:
Christopher Robert Krych

Filed April 22, 2008
Affirmed
Toussaint, Chief Judge

Dakota County District Court
File No. P8-05-10260

Cean F. Shands, 295 Marie Avenue East, West St. Paul, Minnesota 55118 (for appellant Christopher R. Krych)

James C. Backstrom, Dakota County Attorney, Pauline M. Halpenny, Assistant County Attorney, Dakota County Judicial Center, 1560 Highway 55 West, Hastings, MN 55033 (for respondent State of Minnesota)

Considered and decided by Toussaint, Chief Judge; Peterson, Judge; and Crippen, Judge.*

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

TOUSSAINT, Chief Judge

Appellant Christopher Robert Krych challenges his indeterminate commitment as a sexually dangerous person (SDP). Because the trial court did not err in admitting

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

evidence and because clear and convincing evidence in the record supports the conclusion that appellant meets the standards for commitment, we affirm.

D E C I S I O N

Appellant first argues that the trial court erred in admitting evidence of appellant's 1995 conduct toward K.P., then 15 years old, because his actions did not constitute "harmful sexual conduct." Specifically, he argues that (1) the evidence is not based on a conviction, (2) it only shows that "he was persistent in pursuing a relationship with her," and (3) he "did not revert to his previous deviant behaviors" and "showed restraint" in his interactions with her. Evidentiary rulings are within the sound discretion of the trial court and will not be reversed unless the court has clearly abused its discretion. *See State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2002). "On appeal, the appellant has the burden of establishing that the trial court abused its discretion and that appellant was thereby prejudiced." *Id*.

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). Trial courts may consider harmful sexual conduct that did not result in a conviction. *In re Civil Commitment of Ramey*, 648 N.W.2d 260, 268 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002).

At the initial commitment hearing, the trial court admitted into evidence an order for protection K.P. had obtained against appellant and heard her testimony that appellant, 28 years old at the time, persistently asked her to have sex with him, accosted her on a weekly basis, and touched her breasts and buttocks without consent. The first court-

appointed examiner and the state's expert both testified that appellant's behavior toward K.P. created a substantial likelihood of, and actually did cause, serious emotional harm to K.P.

The order for protection and K.P.'s testimony are evidence of appellant's harmful sexual conduct and were relevant to the issue of whether he engaged in a course of harmful sexual conduct. *See* Minn. Stat. §§ 253B.02, subd. 18c(a)(1), 253B.18, subd. 1(a), 253B.185, subd. 1 (2006) (in order to commit person as SDP, petitioner must prove by clear and convincing evidence that person has engaged in "course of harmful sexual conduct"). On this record, we see no error in admitting this evidence.

Appellant next argues that the trial court erred when it precluded appellant's trial counsel from cross-examining K.P. about the harm she suffered as a result of past sexual abuse. We review the trial court's ruling limiting cross-examination for an abuse of discretion. *State v. Parker*, 585 N.W.2d 398, 406 (Minn. 1989).

At the commitment trial, when appellant's counsel began questioning K.P. about the effects of past sexual abuse she had suffered, the state objected, arguing that the prior abuse was irrelevant. The trial court sustained the objection, concluding, "I don't think revictimizing an alleged victim is going to get us anywhere here." But the trial court allowed the parties to stipulate that K.P.'s "entire past" of sexual abuse, including appellant's conduct, caused the psychological harm from which she currently suffers.

The trial court's preclusion of appellant's cross-examination on the narrow topic of K.P.'s prior sexual abuse, out of concern that continued cross-examination would revictimize K.P., is a valid exercise of its broad discretion, and we see no error. *See State*

v. Lanz-Terry, 535 N.W.2d 635, 639 (Minn. 1995) (stating trial court "possesses wide latitude to impose reasonable limits on cross-examination of a prosecution witness" based on concerns about "harassment, decision making on an improper basis, confusion of the issues, and cross-examination that is repetitive or only marginally relevant").

Furthermore, appellant has not demonstrated that he was prejudiced by the trial court's preclusion of cross-examination. The commitment statute only requires that appellant's sexual conduct create "a substantial likelihood of serious emotional harm." *See In re Civil Commitment of Martin*, 661 N.W.2d 632, 638 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003). The first examiner and the state's expert both testified that appellant's behavior toward K.P. created a substantial likelihood of, and actually caused, serious emotional harm.

Appellant contends that his civil commitment is not supported by clear and convincing evidence. "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).

To commit 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) is therefore "likely to engage in acts of harmful sexual conduct." Minn. Stat. §§ 253B.02, subd. 18c(a)(1), 253B.18, subd. 1(a), 253B.185, subd. 1; *see also In re Linehan*, 557 N.W.2d 171, 180 (Minn. 1996) (*Linehan III*) (holding commitment as SDP requires that person be highly likely to engage in future 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*) (holding commitment as SDP requires that person lacks adequate control of sexual impulses).

Appellant argues that the trial court's finding that he has engaged in a course of harmful sexual conduct is not supported by clear and convincing evidence. Appellant concedes that he has committed, and been convicted of, two sexual offenses, but argues that those two offenses do not constitute a course of harmful sexual conduct.

The commitment statute does not define a "course of harmful sexual conduct," but Minnesota courts have defined a "course" as a "systematic or orderly succession; a sequence." *Ramey*, 648 N.W.2d at 268. In determining whether a person has engaged in a course of harmful sexual conduct, the trial court may consider conduct occurring over a period of time, which need not be recent and may consider conduct that did not result in a conviction. *See Ramey*, 648 N.W.2d at 268; *In re Irwin*, 529 N.W.2d 366, 374 (Minn. App. 1995), *review denied* (Minn. May 16, 1995).

First, the state submitted police records establishing that in 1986 a woman reported that appellant raped her and that appellant admitted to having sex with the woman without her consent. This conduct was never charged pursuant to a plea agreement, but it was sexual conduct that created a substantial likelihood of serious physical or emotional harm. *See* Minn. Stat. § 253B.02, subd. 7a(b) (2006) (establishing rebuttable presumption that conduct described in Minnesota's criminal sexual conduct statutes creates substantial likelihood that victim will suffer serious physical or emotional harm); Minn. Stat. § 609.344, subd. 1(c) (2006) (defining third-degree criminal sexual

conduct as engaging in sexual penetration when perpetrator uses "force or coercion to accomplish the penetration").

Second, the state submitted court records establishing appellant's 1986 conviction of third-degree criminal sexual conduct for sexually assaulting an 11-year-old boy. This conviction is rebuttably presumed to be harmful sexual conduct, and appellant offered no evidence at trial to rebut that presumption. *See* Minn. Stat. § 253B.02, subd. 7a(b).

Third, the state submitted Wisconsin police and court records establishing appellant's 1989 conviction of sexual assault for attempting to rape a 14-year-old girl. The trial court did not err in presuming that this conduct created a substantial likelihood of serious physical or emotional harm and thus constituted harmful sexual conduct.[1]

Fourth, the state submitted a 1995 order for protection obtained by K.P. against appellant for his previously described conduct toward her. The first examiner and the state's expert both testified that appellant's behavior toward K.P. constituted harmful sexual conduct.

The trial court made extensive findings that appellant had engaged in four acts of harmful sexual conduct with four victims over nine years and that these acts constituted a "course." These findings are supported by clear and convincing evidence.

Appellant concedes that he has a personality disorder but argues that this disorder is not sexual in nature. But Minn. Stat. § 253B.02, subd. 18c(a)(2) (2006), does not

[1] The record does not indicate specifically which Wisconsin statute appellant was convicted under; however, appellant concedes this conviction, and the documents in the record show that appellant's conduct in this case would almost certainly have been described in Minnesota's criminal sexual conduct statutes. Thus, the trial court properly presumed harm arising from this conduct under Minn. Stat. § 253B.02, subd. 7a.

require that a person's disorder be sexual in nature; rather, it requires that the person have "manifested a sexual, personality, *or* other mental disorder or dysfunction," which "does not allow them to adequately control their sexual impulses." *Id.* (emphasis added); *Linehan IV*, 594 N.W.2d at 876.

The trial court found, based on the record and the testimony of all three examiners, that appellant "manifest[s] sexual, personality or other mental disorders or dysfunctions," and that as a result, he "lacks the adequate ability to control his sexually harmful behavior." The first examiner testified that appellant manifests polysubstance and alcohol dependence, anti-social and paranoid personality disorders, and is a psychopath. The state's expert testified that appellant manifests sexual paraphilia, mood disorder, polysubstance dependence, and delusional disorder. The second court-appointed examiner testified that appellant manifests paranoid personality disorder, antisocial personality disorder, and is a psychopath. At the review hearing, another examiner appointed to review appellant's initial commitment testified that he had diagnosed appellant with paraphilia, polysubstance dependence, and alcohol dependence. All of the examiners testified that these disorders do not allow appellant to adequately control his impulses and, with the exception of one examiner, testified that these disorders do not allow him to adequately control his sexual impulses. The trial court's finding regarding appellant's disorders is supported by clear and convincing evidence.

Appellant contends that the trial court's finding that he is highly likely to engage in future acts of harmful sexual conduct is not supported by clear and convincing evidence. Appellant concedes that he is highly likely to reoffend, but argues that he is

not highly likely to reoffend sexually.

In *Linehan I*, the supreme court set forth six factors that must be considered by the trial court in determining whether a person is "highly likely" to reoffend: (1) demographic characteristics; (2) history of violent behavior; (3) base rate statistics for violent behavior among individuals with the person's background; (4) environmental sources of stress; (5) similarity of future context to context of previous violent behavior, and (6) record in sex offender therapy programs. *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994) (addressing psychopathic-personality commitment); *see Linehan III*, 557 N.W.2d at 189 (applying same factors to determination of future harm for commitment as SDP).

Each of the three examiners at the initial commitment trial considered the *Linehan I* factors. The first examiner and the state's expert both testified that appellant is highly likely to engage in future acts of harmful sexual conduct, but the second examiner concluded that although appellant is highly likely to reoffend, he is not necessarily highly likely to reoffend sexually. The trial court found the testimony of all three examiners to be credible but concluded that the evidence indicated that appellant is highly likely to sexually reoffend.

Turning to the first *Linehan I* factor, the first examiner testified that appellant's age indicates that he will be at a high risk of sexual reoffense for 10 to 15 more years. As to the second factor, the same examiner testified that appellant's history of violent behavior, which includes his kidnapping of a staff member at knife-point to escape a juvenile facility, his harmful sexual conduct, and his first-degree assault conviction for striking a man in the face with a machete, indicates a high risk of violent reoffense. The

state's expert described appellant as "a strikingly violent person."

As to the third factor, the first examiner testified that appellant's base rate statistics results indicate that offenders with his test-scores have a "higher than the usual" risk of sexual reoffense and a 100% likelihood of violent reoffense within seven to ten years. The state's expert also testified that appellant's base rate statistics scores show that he has a high likelihood of sexual reoffense.

As to the fourth and fifth factors, both the first examiner and the state's expert testified that appellant faced sources of stress similar to those he had faced when he sexually offended in the past. But all examiners noted that appellant's ongoing abstention from drugs and alcohol somewhat lessened his future risk of reoffense.

As to the sixth factor, all examiners testified that they considered appellant an untreated sex offender, and the first examiner testified that appellant's lack of sex offender treatment increased his likelihood of sexual reoffense. On this record, and considering the above factors, the trial court's finding that appellant is highly likely to sexually reoffend is supported by clear and convincing evidence.

Appellant argues that because he did not violate his probation while in the community, commitment in a secure facility is not the least-restrictive alternative. Upon finding a person to be an SDP, the trial 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. An appellate court will not reverse a trial court's finding as to the least-restrictive

treatment program that can meet the patient's needs unless it is clearly erroneous. *Thulin*, 660 N.W.2d at 144. The trial court found that appellant's time in the community without sexual offense was not significant and had no impact on his level of dangerousness to the public.

Appellant bears the burden of proof to show that commitment in a secure facility is not the least-restrictive alternative, and he has failed to show any evidence of a less-restrictive alternative that is consistent with his treatment needs and adequately protects public safety. Thus, we conclude that the trial court's determination committing appellant as an SDP to a secure treatment facility is supported by clear and convincing evidence.

Affirmed.