STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1731

In the Matter of the Civil Commitment of:
Raymond Alexander Parson, Jr., a/k/a Clarence Anthony Sims,
a/k/a Raymond Anthone Parson.

Filed March 31, 2009
Affirmed
Toussaint, Chief Judge

Hennepin County District Court
File No. 27-MH-PR-07-535

Michael C. Hager, 301 South Fourth Street, Suite 270, Minneapolis, MN 55415 (for appellant Parson)

Michael O. Freeman, Hennepin County Attorney, Carolyn A. Peterson, Assistant County Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487 (for respondent State of Minnesota)

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

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

TOUSSAINT, Chief Judge

Appellant Raymond Alexander Parson, Jr., a/k/a Clarence Anthony Sims, a/k/a Raymond Anthone Parson, challenges his commitment as a sexually dangerous person (SDP) on constitutional grounds. Because appellant's commitment comports with

substantive and procedural due process, does not violate his equal-protection right, and does not place him in double jeopardy, and because the SDP statute is not void for vagueness, we affirm.

D E C I S I O N

"Whether a statute is constitutional is a question of law subject to de novo review." *In re Kindschy*, 634 N.W.2d 723, 729 (Minn. App. 2001), *review denied* (Minn. Dec. 19, 2001). This court presumes that Minnesota statutes are constitutional and its power to declare a statute unconstitutional should be exercised with extreme caution. *Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 299 (Minn. 2000). [W]e are not in position to overturn established supreme court precedent." *State v. Ward*, 580 N.W.2d 67, 74 (Minn. App. 1998). "[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court." *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987).

1. Appellant's Commitment Comports with Due Process

Appellant argues that the SDP provision is not sufficiently narrowly tailored to satisfy substantive due process, but his claim is without merit. *See In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (holding that SDP statute satisfies due process by requiring finding that it is "highly likely" that individual will commit additional harmful sexual acts) (*Linehan IV*).

Appellant claims that he is serving an "indeterminate life term of preventive detention" because "commitment does not deliver treatment, but may actually prevent it." "[E]ven when treatment is problematic, and it often is, the state's interest in the safety of

others is no less legitimate and compelling. So long as civil commitment is programmed to provide treatment and periodic review, due process is provided." *In re Blodgett*, 510 N.W.2d 910, 916 (Minn. 1994). Appellant's substantive-due-process argument fails.

2. Appellant's Commitment Does Not Violate His Equal-Protection Right

Appellant argues that Minn. Stat. § 253B.02, subd. 18c (2006), defining an SDP, fails to distinguish between a recidivist criminal, such as himself, and dangerous sexual offenders. But this argument "ignores the fact that the sexual predator poses a danger that is unlike any other." *Blodgett*, 510 N.W.2d at 916-17; *see In re Linehan*, 557 N.W.2d 171, 186 (Minn. 1996) (holding that SDP provision does not violate equal-protection rights because "interests in public protection and treatment would be reasonably served by a distinction between sexually dangerous persons with and without mental disorders") (*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) (*Linehan IV*).

Here, the district court made extensive findings, based on clear and convincing evidence, that appellant's lack of control was tied to his mental disorders, which distinguishes his commitment from typical recidivist criminal cases. Appellant's equal-protection argument fails.

3. Minn. Stat. § 253B.02, subd. 18c, is Not Void for Vagueness

Appellant argues that the "broad language regarding failure to 'adequately control' sexual impulses within the SDP statute renders it void for vagueness" because the meaning of 'adequate control' is "arbitrarily imposed."

This court has previously addressed appellant's argument:

> Any vagueness in the phrase "adequate control" comes from taking it out of the larger context . . . Taken in the large context of the holding of *Linehan IV*, the meaning of the phrase "adequate control" is clear; an offender's history of harmful sexual conduct and a high likelihood of future dangerousness, coupled with a mental illness or dysfunction, demonstrates that an offender will find it difficult to control behavior.

In re Civil Commitment of Ramey, 648 N.W.2d 260, 268 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002). Furthermore, the lack-of-adequate-control standard, "when read along with the language in *Linehan IV* requiring a 'mental abnormality' or 'personality disorder' making it 'difficult, if not impossible' for that person to control his sexual conduct, satisfies the constitutional standard" set by *Kansas v. Crane*. *In re Martinelli*, 649 N.W.2d 886, 890 (Minn. App. 2002) (quotation omitted), *review denied* (Minn. Oct. 29, 2002); *Kansas v. Crane*, 534 U.S. 407, 413, 122 S. Ct. 867, 870 (2002) (requiring finding of "serious difficulty in controlling behavior" before sexual offender is civilly committed). The SDP statute is not void for vagueness as applied to appellant.

4. Appellant's Commitment Does Not Place Him in Double Jeopardy

It is appellant's contention that he "was retried on the crimes for which he was convicted in criminal court." But SDP commitment does not violate double jeopardy. *See Linehan IV*, 594 N.W.2d at 871-72 (addressing double-jeopardy challenge to SDP statute). "If an individual otherwise meets the requirements for involuntary civil commitment, the State is under no obligation to release that individual simply because the detention would follow a period of incarceration." *Kansas v. Hendricks*, 521 U.S. 346, 370, 117 S.Ct. 2072, 2086 (1997). The SDP act "does not involve retribution" and is remedial in nature; thus, it does not violate substantive due-process rights. *Linehan IV*,

594 N.W.2d at 871-72; *see also Call v. Gomez,* 535 N.W.2d 312, 319-20 (Minn. 1995); *Blodgett,* 510 N.W.2d at 916.

5. Appellant Was Not Entitled to a Jury Trial

Appellant challenges his commitment on procedural due-process grounds, claiming that he was entitled to a jury trial. But the United States and Minnesota constitutions do not provide a jury-trial right in a civil-commitment proceeding. *Joelson v. O'Keefe,* 594 N.W.2d 905, 910 (Minn. App. 1999), *review denied* (Minn. July 28, 1999).

Appellant also argues that he is entitled to a jury trial under territorial law predating the adoption of our constitution. But this court is not in a position to overturn established supreme court precedent. *See Ward,* 580 N.W.2d at 74; *Tereault,* 413 N.W.2d at 286.

Affirmed.