**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A08-1188**
**A08-1486**

In re the Matter of the Civil Commitment of:
Hollis John Larson

**Filed April 21, 2009**
**Affirmed**
**Lansing, Judge**

Goodhue County District Court
File No. 25-PR-08-559

Hollis J. Larson, 7600 – 525th Street, Rush City, MN 55069-2265 (pro se appellant)

Lori Swanson, Attorney General, John D. Gross, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Stephen N. Betcher, Goodhue County Attorney, Goodhue County Justice Center, 454 West Sixth Street, Red Wing, MN 55066 (for respondent State of Minnesota)

Considered and decided by Lansing, Presiding Judge; Kalitowski, Judge; and Crippen, Judge.*

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

**LANSING**, Judge

In this consolidated appeal from an initial and indeterminate commitment as a sexually dangerous person, Hollis Larson raises five substantive challenges to his initial

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

commitment and one procedural challenge to his indeterminate commitment. We conclude that the district court properly exercised its jurisdiction, the evidence was sufficient to support the commitment, the district court's evidentiary rulings were well within its discretion, Larson received effective assistance of counsel, the proceedings did not violate his constitutional rights, and the indeterminate commitment was not procedurally invalid. We, therefore, affirm.

**F A C T S**

Goodhue County filed a petition to commit Hollis Larson as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP) on February 1, 2008. When the county filed the petition, Larson was incarcerated at a Minnesota correctional facility where he was serving sentences for four criminal-sexual-conduct convictions entered in the early 1990s. Larson was scheduled for release from prison on February 5, 2008.

Three days after initiation of the commitment proceedings, the district court granted the county's request for a hold order under Minn. Stat. § 253B.07, subd. 2b(3) (2008). As a result of the order, Larson was transported to the Minnesota Sex Offender Program (MSOP) at St. Peter on February 5.

The district court held a commitment hearing on May 12, 2008. Two court-appointed examiners testified at the hearing: Dr. Rosemary Linderman was the examiner selected by the county and Dr. Roger Sweet was the independent examiner selected by Larson. Both examiners concluded that, although Larson does not satisfy the criteria for commitment as an SPP, he satisfies the criteria for commitment as an SDP. Their conclusions were grounded on the following facts: Larson was convicted in 1992 for

sexually assaulting his thirteen-year-old niece, SLL, when he was twenty-four years old; Larson's sexual abuse of SLL occurred over an extended period of time; the abuse included sexual intercourse, fondling, digital penetration, physical restraint, cruelty, coercion used to gain compliance, threats used to maintain secrecy, and alcohol provided to the victim; Larson was convicted in 1993, of sexually assaulting his fifteen-year-old niece, MLM, when he was twenty-five years old; the abuse involved two separate incidents, which included fondling, digital penetration, sexual intercourse, and implied threats that, if MLM resisted, Larson would assault her younger sisters; when Larson was twenty-four years old, he was charged, but not convicted, with sexually assaulting a fifteen-year-old girl, DR, in South Dakota in December 1988; Larson denies culpability for his convictions; he refuses sex-offender treatment; he has an extensive nonsexual criminal history; he suffers from mental disorders; and, based on several factors, including inadequate ability to control his sexual impulses, he is highly likely to reoffend.

At the time of the commitment proceedings, Larson had also been charged, in January 2008, with making terroristic threats in letters from prison to his sister. The criminal complaint alleged that the letters, when read in the context of their past relationship, suggested that if Larson's sister did not send him money he would kill her. Larson was convicted of the terroristic-threats count on May 12, 2008. He remained at MSOP while he awaited sentencing.

The district court ordered Larson committed as an SDP on May 22, 2008. On the same day, the district court sentenced him to twenty-nine months in prison for his terroristic-threats conviction. At sentencing, the district court noted that Larson had

threatened to commit suicide if he were committed to MSOP as an SDP and that Larson could receive treatment in prison. The district court decided to send Larson to prison to provide him with a "buffer period before he goes back to [MSOP]." Larson was immediately transported to the correctional facility in Rush City to serve his twenty-nine-month sentence.

Following the initial commitment, psychologists at MSOP prepared a sixty-day report. As part of the report, the psychologists attempted to interview Larson on June 18, 2008, but Larson declined to participate in the interview. The report concluded that Larson continued to satisfy the criteria for commitment as an SDP.

MSOP filed its sixty-day report on July 11, 2008. The district court held a hearing and ordered Larson's indeterminate commitment on July 28, 2008. Larson appeals from the district court's orders for both his initial and indeterminate commitment as an SDP.

## D E C I S I O N

### I

The first of Larson's five substantive challenges to his initial commitment is that the district court lacked subject-matter jurisdiction over the commitment proceedings and lacked personal jurisdiction over Larson. Neither argument is persuasive.

In Minnesota, district courts have subject-matter jurisdiction over judicial commitments, which include SDP commitments. Minn. Stat. §§ 253B.18, subd. 1, .185, subd. 1 (2008); *In re Commitment of Beaulieu*, 737 N.W.2d 231, 237 (Minn. App. 2007); *In re Ivey*, 687 N.W.2d 666, 669 (Minn. App. 2004); *review denied* (Minn. Dec. 22,

2004). Larson has provided us with no viable argument for his claim that the district court lacked subject-matter jurisdiction over his commitment proceedings.

Larson bases his claim that the district court lacked personal jurisdiction on the fact that he lived in South Dakota before he was arrested in the early 1990s and is a legal resident of that state. But Larson does not dispute that he was personally served with the summons and the commitment petition while he was physically in Minnesota. It is well-established that in-state service is generally sufficient to confer personal jurisdiction. *Burnham v. California*, 495 U.S. 604, 610, 619, 110 S. Ct. 2105, 2110, 2115 (1990) (emphasizing that state's jurisdiction "over nonresidents who are physically present in the State" is "[a]mong the most firmly established principles of personal jurisdiction in American tradition"); *cf. Ivey*, 687 N.W.2d at 670 (analyzing connection between state and person apprehended in New York and brought to Minnesota for commitment proceedings).

Larson argues that personal jurisdiction was not effective because he has not been in Minnesota voluntarily since the early 1990s: he was involuntarily serving a sentence in Minnesota correctional facilities until February 5, 2008, and he was detained involuntarily after his February 5 release date under a court-ordered hold. We agree that *Burnham* provides some support for the argument that in-state service may be insufficient to establish personal jurisdiction if the person's presence in the state is involuntary *and* the assertion of personal jurisdiction violates "traditional notions of fair play and substantial justice." 495 U.S. at 629, 633, 637 n.11, 110 S. Ct. at 2120, 2122, 2124 n.11 (Brennan, J., concurring) (quotation omitted). But the district court's assertion of

personal jurisdiction in this case comports with traditional notions of fair play and substantial justice.

Larson availed himself of Minnesota's authority when he visited and committed crimes in the state in the early 1990s, and he was still serving his sentences for those crimes in the custody of the commissioner of corrections when the commitment petition was filed. *Cf. Ivey*, 687 N.W.2d at 670 (holding that commissioner's "supervisory power over appellant by virtue of the ten-year, conditional-release term" provided adequate connection between state and appellant for personal-jurisdiction purposes). Furthermore, Larson has a long history of contacts with Minnesota correctional and treatment facilities that, in part, serve as a basis for his commitment as an SDP. The district court did not lack personal jurisdiction over Larson.

**II**

Under Minn. Stat. §§ 253B.18, subd. 1 and 253B.185, subd. 1, a district court shall commit a person to a secure treatment facility if the court finds by clear and convincing evidence that the person is an SDP, unless the person "establishes by clear and convincing evidence that a less restrictive treatment program is available" and meets the needs of the patient and the public. A person is an SDP if he meets three criteria: (1) the person "has engaged in a course of harmful sexual conduct"; (2) the person "has manifested a sexual, personality, or other mental disorder or dysfunction"; and (3) the person does not have adequate control over his sexual impulses and is highly likely "to engage in acts of harmful sexual conduct." Minn. Stat. § 253B.02, subd. 18c(a) (2008); *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*).

Larson did not provide any evidence at trial to establish the availability or suitability of a less restrictive treatment facility. Thus, we turn to his argument that the evidence was insufficient as a matter of law to satisfy the criteria for commitment as an SDP.

Under the first criterion, a court may not commit a person as an SDP unless the person has engaged in a course of harmful sexual conduct. Harmful sexual conduct is "sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another." Minn. Stat. § 253B.02, subd. 7a(a) (2008). A course of harmful sexual conduct is a sequence of harmful sexual conduct occurring over a period of time. *In re Civil Commitment of Stone*, 711 N.W.2d 831, 837 (Minn. App. 2006), *review denied* (Minn. June 20, 2006). A rebuttable presumption that the person has engaged in harmful sexual conduct arises when the person has been convicted of certain crimes, including criminal sexual conduct in the first or second degree. Minn. Stat. § 253B.02, subd. 7a(b) (2008).

Larson's 1992 and 1993 convictions for first- and second-degree criminal sexual conduct give rise to a presumption that he engaged in harmful sexual conduct. Because these convictions are based on a series of incidents that occurred over a period of time, the incidents constitute a course of harmful sexual conduct, as defined by the statute. In addition to the presumption, Linderman and Sweet both testified that Larson's sexual misconduct would likely have resulted in serious physical or emotional harm to his victims. Based on the presumption and the examiners' testimony, the evidence was sufficient to satisfy the standard of proof by clear and convincing evidence.

Clear and convincing evidence also supports the district court's determination, under the second criterion, that Larson manifests a sexual, personality, or other mental disorder or dysfunction. Linderman diagnosed Larson as having an antisocial personality disorder, personality disorder not otherwise specified (with narcissistic, histrionic, and paranoid features), and psychopathy. Sweet also diagnosed Larson with several disorders including personality disorder not otherwise specified (antisocial/narcissistic). Both Linderman and Sweet testified that Larson's antisocial and narcissistic personality disorders were significant factors in their determination. Larson contends that Sweet's testimony is unreliable because Sweet conducted an evaluation of Larson in 1992 that contradicts the 2008 evaluation. But Sweet testified at the commitment hearing that he did not evaluate Larson before 2008. The evidence supports the district court's finding on this criterion.

Finally, clear and convincing evidence supports the district court's determination that Larson does not have adequate control over his sexual impulses and is highly likely to engage in acts of harmful sexual conduct. Six factors are considered when examining whether an offender is highly likely to reoffend. *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994) (*Linehan I*). The court must consider: (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, including cognitive factors that indicate "the person may be predisposed to cope with stress in a violent or nonviolent manner"; (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. *Id.* The examiners provided evidence on each of the six factors that established Larson's lack of adequate control and his likelihood to reoffend.

Under the first factor, Linderman reported that Larson has demographic characteristics that increase his risk to reoffend. Specifically she noted that Larson, a male, has a history of problems with authority beginning in his mid-teens, that he lacks motivation to change his behavior, and that his defiant attitude and conflict with authority have carried forward into his adult life. Sweet, in his testimony, agreed with Linderman's assessment. The record supports the district court's finding that, viewed in their entirety, the characteristics indicate an increased risk to reoffend.

Linderman and Sweet both documented Larson's history of violent behavior that is relevant to the second factor. This history includes threatening a peer with a knife while in grade school, using a gun to gain compliance during an aggravated robbery, threatening to kill others when he did not get his way, threatening prison staff, and sending threatening letters to his sister.

On the third factor, which addresses base-rate statistics, Linderman testified that the recidivism rates for incest offenders like Larson are between ten and fifteen percent over twenty-five years, which is lower than other categories of sex offenders. But she emphasized that Larson's recidivism risk is much higher based on several factors, including his psychopathy, his history of nonsexual violence, lack of evidence that he is capable of an intimate relationship, and his impulsive behavior. Sweet reported that Larson falls within category seven on the Violence Risk Appraisal Guide and noted that

fifty-five percent of the reference group in category seven reoffended in a violent manner within seven years of release and sixty-four percent of the reference group reoffended in a violent manner within ten years of release. Sweet performed two other tests that indicated that Larson has an even higher risk of recidivism.

Linderman and Sweet agreed that, under the fourth factor, Larson is predisposed to cope with stress by resorting to violence. Linderman testified that Larson's sense of entitlement and his grandiosity hinder his ability to manage stress in a nonviolent manner. Sweet reported that Larson's "well ingrained impulsivity, hostility, manipulative mind set, low frustration tolerance, extreme narcissism and antisocial nature will continue to limit his ability to cope with stress in a rational and/or nonviolent manner."

Under the fifth factor, Linderman testified that Larson's emotional state has not significantly changed since he was fifteen years old: he remains "stubborn, emotionally immature, [has] low frustration tolerance, act[s] impulsively, [is] moody and irritable if confronted, [and has] little motivation to change." Sweet reported that Larson "is at an age where he could have access to young adolescent females by developing a relationship with a woman with young female adolescents, similar to his previous victim pool."

The record also supports the district court's finding under the sixth factor that the record provides no evidence of Larson participating in sex-offender treatment programs. In his appellate brief, Larson continues to deny culpability for his sexual offenses.

The examiners' assessments of Larson's lack of control over his sexual impulses and the testimony addressing each of the six recidivism factors provided clear and convincing evidence for the district court to determine that the third criterion had been

met. We conclude that the evidence provides more than an adequate basis for the district court to determine that clear and convincing evidence satisfied all three SDP criteria.

**III**

Larson's evidentiary challenges focus primarily on three rulings which he contends resulted in reversible error. The rulings relate to the admissibility of evidence involving DR, the prejudicial effect of a polygraph test, and the admissibility of a compilation of documents. On appeal, evidentiary rulings "will be reversed only if the court has clearly abused its discretion," and a new trial will be granted only if the improper ruling results in prejudice. *Midway Ctr. Assoc. v. Midway Ctr. Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975); *In re Civil Commitment of Ramey*, 648 N.W.2d 260, 270 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002).

We reject Larson's claim that the evidence involving DR is inadmissible because the conduct did not result in a conviction. The fact that a person was not convicted of a crime does not, by itself, determine admissibility. *Ramey*, 648 N.W.2d at 268 (stating that court may consider conduct not resulting in conviction). Larson's claim of the prejudicial effect of a polygraph test has no factual basis in the record. The district court commented at the sentencing hearing that he had granted Larson's request for a polygraph that had not been favorable to Larson's claims. In context, the comment, made in the criminal proceeding, suggests only that the district court might have taken a result favorable to Larson into consideration. This comment does not provide a basis for reversal in the commitment proceeding. *See* Minn. R. Civ. P. 61 (stating that any error that does not affect substantial rights is harmless). Finally, Larson challenged the

admissibility of Goodhue County's compilation of documents as a violation of his Fourth Amendment right against unlawful searches. But he argued only that "no search warrant was executed to obtain the materials" and that the "evidence came from [his] sister." These facts, even if accepted as true, are insufficient to support Larson's argument that his right against unreasonable searches was violated or that he had a remedy in this commitment proceeding. To the extent Larson raises any other challenges to evidentiary rulings, our evaluation of the record discloses no basis for reversal.

**IV**

Larson next argues that he received ineffective assistance of counsel. A person has a right to be represented by counsel at a commitment proceeding. Minn. Stat. § 253B.07, subd. 2c (2008). "The court shall appoint a qualified attorney to represent the proposed patient if neither the proposed patient nor others provide counsel." *Id.* The appointed counsel must "be a vigorous advocate on behalf of the person." *Id.* (4).

We review claims of ineffective assistance of counsel in commitment proceedings under the same standard we apply to criminal proceedings. *In re Dibley*, 400 N.W.2d 186, 190 (Minn. App. 1987), *review denied* (Minn. Mar. 25, 1987). To establish ineffective assistance of counsel, a person must first show that his counsel failed to exercise the customary skills and diligence of a reasonably competent attorney. *Dukes v. State*, 621 N.W.2d 246, 252 (Minn. 2001). The claimant must also show a reasonable probability that the outcome would have been different but for the deficiency. *Id*.

The record demonstrates that Larson's attorney was a vigorous advocate and exercised the customary skills and diligence of a reasonably competent attorney. And,

considering the weight of the evidence supporting the commitment petition, Larson has failed to show a reasonable probability that the outcome would have been different but for the alleged errors. Larson's specific assertions of ineffective assistance of counsel either lack evidentiary support or relate to issues of trial strategy that "lie within the discretion of trial counsel and will not be second-guessed by appellate courts." *Leake v. State*, 737 N.W.2d 531, 536 (Minn. 2007). For these reasons, we reject Larson's argument that he received ineffective assistance of counsel.

**V**

Larson also raises three constitutional issues. He contends, first, that he was denied "substantive and procedural due process by the district court's failure to hold the commitment hearing within the time mandated by [Minn. Stat.] § 253B.08, subd. 1 [(2008)]." Minn. Stat. § 253B.08, subd. 1(a), states that a hearing on a petition for SDP commitment "shall be held within [ninety] days from the date of the filing of the petition." But, "the court may extend the time of the hearing up to an additional thirty days" for good cause shown. *Id.*

The petition for Larson's commitment was filed on February 1, 2008. Absent an extension, Larson's hearing should have been held within ninety days, that is, by April 30, 2008. But the district court postponed the hearing to allow time for Sweet, the independent examiner chosen by Larson, to examine Larson. The district court determined that there was "good cause" for the extension because Linderman's report recommended commitment and, without the second evaluation, Larson would not have a chance to provide expert evidence that might help his defense. At a hearing in April,

Larson complained that he should not be forced to choose between an evaluation by a second examiner and a hearing within ninety days. The commitment hearing was held on May 12, 2008—102 days after the petition was filed. Because allowing for Larson to develop the record constituted "good cause" for the extension, the district court did not violate Larson's rights by postponing the hearing.

Larson's second constitutional argument is that the statute governing SDP commitment violates his right to equal protection because it is underinclusive: it applies only to persons who have previously engaged in a course of harmful sexual conduct even though persons who have not previously engaged in the same conduct may be equally likely to commit harmful sexual acts in the future. The supreme court rejected a similar argument when it decided *In re Linehan*, 557 N.W.2d 171, 186-87 (Minn. 1996) (*Linehan III*), *judgment vacated and remanded for reconsideration sub. nom. Linehan v. Minnesota*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand sub. nom. In re Linehan*, 594 N.W.2d 867 (Minn. 1999) (*Linehan IV*). The supreme court concluded that the SDP act's distinction between persons with mental disorders and persons without mental disorders did not violate equal protection because the classification "helps isolate sexually dangerous persons most likely to harm others in the future" and is therefore reasonably connected "to the state's interests in public protection and treatment." *Id.* at 186-87. Larson's equal-protection claim fails for the same reason. The distinction is reasonably connected to the state's interests and satisfies equal-protection requirements.

As his third constitutional claim, Larson argues that the SDP act violates the ban on double jeopardy and ex post facto laws under the U.S. and Minnesota Constitutions.

Because the SDP act is, on its face, civil rather than criminal, Larson "must offer the 'clearest proof' that the act is sufficiently punitive in purpose or effect" to trigger analysis under the Ex Post Facto and Double Jeopardy Clauses. *Id.* at 187 (setting forth this standard); *see Linehan IV*, 594 N.W.2d at 872 (affirming analysis in *Linehan III*). Larson suggests that the record provides sufficient proof that the act is punitive because it shows that the county waited until Larson had almost finished serving his sentence to file the petition for commitment and because the district court indicated at the sentencing hearing that Larson would receive better treatment in prison than at MSOP and that a commitment to MSOP "[is] basically a life sentence."

Larson's assertion that these facts supply the "clearest proof" that the SDP Act is punitive in purpose or effect is unpersuasive. The record contains no evidence that the county intended to punish Larson by waiting until February 2008 to file the commitment petition. And, even if the record supported the district court's remarks, it would not conclusively demonstrate that the SDP act is punitive. *See Kansas v. Hendricks*, 521 U.S. 346, 366, 117 S. Ct. 2072, 2084 (1997) (holding that commitment statute is not necessarily punitive if it fails to offer treatment).

**VI**

After a person is initially committed as an SDP, the district court must hold a second hearing to determine whether the person continues to meet the criteria for commitment. Minn. Stat. § 253B.18, subd. 2 (2008). If the person continues to meet the criteria, the court must "order commitment of the proposed patient for an indeterminate period of time." Minn. Stat. § 253B.18, subd. 3 (2008). Before the second hearing is

held, the treatment facility must file a written treatment report with the district court that states whether the person continues to meet the criteria for commitment. *Id.*, subd. 2(a). The treatment report must generally be filed "within [sixty] days after commitment." *Id.*

Larson argues that the district court erred when it ordered his indeterminate commitment because he was transferred to prison on the day his initial commitment was ordered and, as a result, the sixty-day report did not fulfill its statutory purpose of showing Larson's progress in MSOP treatment following the initial commitment.

We affirm the order for indeterminate commitment for two reasons. First, only one statutory exception permits the treatment report to be filed at a time that is not "within [sixty] days after the commitment." *Id*. The exception states, "If the person is in the custody of the commissioner of corrections when the initial commitment is ordered under subdivision 1, the written treatment report must be filed within [sixty] days after the person is admitted to a secure treatment facility." *Id.* Because Larson was at MSOP on a hold order when the initial commitment was ordered and not in the custody of the commissioner of corrections, the exception is inapplicable and the general rule applies.

Second, application of the general rule is fair and reasonable in this case. The sixty-day report accounts for the time Larson spent at MSOP before his initial commitment. It presumably reflects Larson's response to treatment both before and after the court-appointed examiners interviewed him. Thus the report reflects a period of time that was not accounted for at the initial commitment hearing, during which Larson had access to treatment at MSOP. The report also shows that the psychologists attempted to interview Larson on June 18, 2008, to assess his progress following the initial

commitment, but Larson declined to participate. And, finally, the record indicates that Larson was sent to the correctional facility in St. Cloud because the examiners believed that would be the best place for him to receive treatment. Thus, the record shows that the sixty-day report evaluated the progress Larson made with access to treatment within a relevant time period. And Larson has not identified any way in which he was unfairly prejudiced by being evaluated within sixty days of the initial commitment.

**Affirmed.**