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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1903**

In the Matter of the Civil Commitment of:
Thomas Ladon Webber.

**Filed April 28, 2009
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-MH-PR-07-543

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Considered and decided by Halbrooks, Presiding Judge; Ross, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Thomas Webber challenges the district court's judgment indeterminately committing him as a sexually dangerous person and sexual psychopathic personality. He argues that the state failed to show by clear and convincing evidence that he is "highly

likely” to reoffend and that he is a “psychopath.” Webber also argues that Minnesota’s civil commitment statute is unconstitutionally vague and that civil commitment violates his rights to due process, equal protection, a jury trial, and to be free of double jeopardy. We affirm.

FACTS

Thomas Webber is 40 years old and has a history of violent sexual offenses. In 1991, he was charged with two counts of third-degree criminal sexual conduct. The 15-year-old victim, P.S., accused Webber of pinning her to the floor in her home and raping her. Webber pleaded guilty to third-degree criminal sexual conduct and received an 18-month prison sentence that was stayed on conditions of probation for five years. At his commitment hearing, Webber admitted that he raped P.S.

In August 1993, Webber was charged with first-degree criminal sexual conduct. The 18-year-old victim, A.C., reported that Webber put his arm around her throat, knocked her unconscious, and carried her to his car. He then drove her to a lake in South Minneapolis where he raped her. A medical examination of A.C. showed that she had bruises on her head, neck, and knees, and abrasions in her vaginal area. Webber initially suggested that although A.C. did not agree to have sex with him, she was not totally against it. Webber pleaded guilty to third-degree criminal sexual conduct. The stay of his 18-month sentence from 1991 was revoked and the district court sentenced him to 64 months in prison. At his commitment hearing, Webber admitted that he raped A.C.

Also in August 1993, before being imprisoned for his sexual assaults, Webber was arrested and charged with possession of a firearm by a felon. In May 1994, Webber

pleaded guilty to the charge and was sentenced to 17 months in prison, to be served concurrently with his criminal sexual conduct sentences.

Early in his prison term, Webber was interviewed for admission to sex offender treatment at the Lino Lakes prison. But because he refused to discuss his offenses, he was considered unamenable to treatment and was not admitted. He later entered the treatment program and apparently began to progress, passing into “Phase II” and eventually “Phase III” of the program. He continued treatment until his release in March 1997. He entered an “Intensive Supervised Release” program and continued sex offender treatment at Alpha Human Services. He attended support-group meetings and completed his aftercare treatment, but he soon reoffended.

In early 2001, Webber was charged for a series of sexual offenses. In January 2001, the state charged him with third-degree criminal sexual conduct for sexually assaulting J.M., a 17-year-old girl. J.M. reported that Webber entered the bathroom where she was bathing, reached in the bathwater, inserted his finger into her vagina and kept it there for approximately one minute. Webber then left the bathroom, but he returned when J.M. was drying herself and attempting to dress. Webber allegedly grabbed her legs, digitally penetrated her vagina again, and then put his mouth on her vagina and kept it there while she attempted to push him away. In February 2001, the state also charged Webber with two counts of fourth-degree criminal sexual conduct for inappropriately touching the inner thigh and vagina of a 13-year-old girl, R.V., and for touching the vagina of a 14-year-old girl, U.J. It also charged him with failing to register as a sex offender and failure to appear in court regarding the charges.

In November 2001, Webber waived his right to a jury trial and the district court found him guilty of four crimes: (1) third-degree criminal sexual conduct for the incident with J.M.; (2) fourth-degree criminal sexual conduct for the incident with R.V.; (3) false imprisonment for the incident with U.J.; and (4) failure to register as a sex offender. The district court sentenced Webber to prison for a total of 88 months for these offenses. After being imprisoned for the 2001 offenses, Webber refused to discuss the offenses, or denied committing them, and he therefore was not admitted to sex offender treatment.

In May 2007, the state petitioned the district court to commit Webber as a sexually dangerous person and sexual psychopathic personality. The district court conducted a trial on the commitment petition in September 2007. Two licensed psychologists evaluated Webber, compiled reports, and discussed their evaluations during Webber's commitment proceeding. One of the psychologists, Dr. Reitman, diagnosed Webber with a personality disorder with obsessive and narcissistic traits. Dr. Reitman concluded that Webber's disorders do not allow him to control his sexual impulses and that "Webber is highly likely to engage in future acts of harmful sexual conduct." The other psychologist, Dr. Hoberman, concluded that Webber "should continue to be regarded as a person with characteristics that indicate the need for civil commitment as a sex offender or someone who is highly likely to be dangerous, in a sexual manner, to non-consenting females of various ages." Both psychologists opined that Webber met the statutory elements of both a sexually dangerous person and sexual psychopathic personality.

Following Webber's commitment trial, the district court committed Webber to the state sex offender treatment program, concluding that he satisfied the requirements for

commitment as a sexually dangerous person and sexual psychopathic personality. As required by statute, the state filed a treatment report with the district court after an initial period of commitment. The report recommended that Webber be committed indeterminately. The district court agreed and granted the state's petition for indeterminate commitment. This appeal follows.

D E C I S I O N

Webber challenges the district court's order for civil commitment. A person may be civilly committed as a sexually dangerous person or sexual psychopathic personality if the state proves the need for commitment by clear and convincing evidence. Minn. Stat. §§ 253B.18, subd. 1(a), 253B.185, subd. 1 (2008). Reviewing a civil commitment on appeal, we are limited to examining the district court's compliance with the statute and determining whether its findings support its conclusions of law. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). We will affirm the district court's factual findings unless they are clearly erroneous, and we defer to the district court on matters of credibility. *Id.* Whether the factual findings satisfy the statutory requirements for civil commitment, however, is a question of law subject to de novo review. *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994) (*Linehan I*).

Webber argues that his commitment as a sexually dangerous person should be reversed because he contends that his actuarial test scores and an examination of the *Linehan* factors do not show that he is highly likely to reoffend. He asserts that the district court's decision to commit was "based entirely on the clinical judgment of Dr. Hoberman." Webber also contends that he cannot be committed as a sexual psychopathic

personality because he scored “below the cut off” of clinical psychopathy and does not meet the requirements of a sexual psychopathic personality. We address these arguments in turn.

I

The district court appropriately concluded that Webber is a sexually dangerous person. A sexually dangerous person is one who (1) has engaged in a course of harmful sexual conduct; (2) has manifested a sexual, personality, or other mental disorder or dysfunction that does not allow the person to adequately control his or her sexual impulses; and (3) as a result, is highly likely to engage in future harmful sexual conduct. Minn. Stat. § 253B.02, subd. 18c(a) (2008); *In re Linehan*, 594 N.W.2d 867, 873–74, 876 (Minn. 1999) (*Linehan IV*). 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). Webber limits his challenge to the third element. The record supports the district court’s conclusion that Webber is highly likely to engage in future harmful sexual conduct.

To determine whether a person is highly likely to engage in future harmful sexual conduct, district courts are required to consider six factors: (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; (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 treatment programs. *Linehan I*, 518 N.W.2d

at 614. The district court's commitment order noted that it considered the *Linehan* factors in determining that Webber was highly likely to reoffend. And the experts' reports and testimony account for each of the six *Linehan* factors and support the district court's conclusion that Webber is highly likely to reoffend.

Webber's demographic characteristics support the finding that he is highly likely to reoffend. Dr. Hoberman reported studies suggesting that high-risk offenders released between the ages of 25 and 59 showed no decrease in sexual recidivism. Hoberman also noted that Webber "continues to carry a relatively high degree of risk" of reoffending because he is a "relatively young male with a history of sex offending." Dr. Reitman also reported that Webber's age is "not a factor to suggest he is not likely to sexually re-offend."

Webber's history of violent sexual behavior also supports the finding that he is highly likely to reoffend. His violent acts include two rapes that resulted in guilty pleas for third-degree criminal sexual conduct, and several incidents of molestation and forced fondling where Webber has used his large stature (six feet, five inches) to dominate his victims. Dr. Hoberman noted there was a significant degree of both physical and emotional harm associated with Webber's past offenses.

The third *Linehan* factor considers "the base rate statistics for violent behavior among individuals of this person's background." *Linehan I*, 518 N.W.2d at 614. Dr. Hoberman explained that the actuarial tests are "adjusted base rates" that look at "a group of specific characteristics about an offender and see what . . . rate of offending is associated with persons . . . who have those characteristics." He also testified that the

actuarial tests grossly underestimate an offender's real risk of *reoffending* because many of the tests actually measure risk of *reconviction* or *rearrest*. He opined that the statistical rate of reoffense understates the risk because some sexual crimes go unreported.

Webber argues that because his actuarial test scores indicate at most a 50% chance of reoffending, there is not clear and convincing evidence that he is highly likely to reoffend. But the argument fails for three reasons. First, the district court considered Dr. Hoberman's testimony that, based on one study, Webber has a recidivism probability of 58% in seven years and 80% within ten years. And Dr. Reitman noted that "[a]ll of the risk assessment tools[s] I used (Hare PCL-R, VRAG, SORAG, and Static-99) . . . suggest a high likelihood [that Webber will] re-offend." Webber's assertion that his test scores indicate only a 50% chance that he will reoffend is therefore inaccurate. Second, even if the argument had been factually accurate, base-rate statistics for violent behavior among individuals with the offender's background are just one of the six factors used to determine whether the offender is highly likely to reoffend. According to *Linehan* and its progeny, an evaluation of whether there is clear and convincing evidence that an offender is "highly likely" to reoffend is not dependent on actuarial test scores above 50%.

Third, Webber misses the distinction between measuring the likelihood of reoffense and the likelihood of rearrest or reconviction. Webber specifically cites to his score on the MnSOST-R, which indicated at least a 25% chance that he would be *rearrested* for a new sexual offense within six years of being released, and argues that his score cannot support a finding that he is highly likely to *reoffend*. Webber similarly

mistakenly relies on his score on the Static-99 test to contend that it only showed a 40% chance of reoffending. But the Static-99 measures the likelihood of being reconvicted, which is lower than the likelihood of reoffending. The third *Linehan* factor supports the finding that Webber is highly likely to reoffend if he is not committed.

Evidence on the record indicates that Webber's "community environment . . . would continue to be stressful" and that Webber would be in essentially the same context where he has demonstrated sexually inappropriate behavior previously. The fourth and fifth *Linehan* factors indicate that Webber has an increased likelihood of reoffending if he is released in the community, and they support the district court's decision to commit him.

It is unimpressive that Webber "technically completed" two residential sex offender treatments when he was incarcerated in the 1990s, since he sexually re-offended on three occasions after participating in treatment. Both experts agreed that, "clinically speaking," Webber is regarded as an "untreated sex offender." Dr. Reitman observed that Webber "demonstrated no knowledge about his sexual cycle" and has "no understanding about removing himself from a situation." He testified that offenders who have completed treatment successfully understand those concepts. After his most recent offenses, Webber refused sex offender treatment and Dr. Hoberman rated him in the low range of treatment motivation. He noted Webber's curious belief that he does not need treatment.

A review of the *Linehan* factors shows that clear and convincing evidence supports the district court's conclusion that Webber is highly likely to reoffend if he is

not civilly committed. We therefore affirm the district court’s conclusion that Webber meets the statutory definition of a sexually dangerous person.

II

Webber contends that he cannot be committed as a sexual psychopathic personality because, according to Dr. Reitman, Webber scored a 27 on the PCL-R, which is “below the cut off” of clinical psychopathy. This argument fails. According to Dr. Hoberman, Webber scored a 32 on the PCL-R, which “puts him over the technical cutoff . . . as a ‘psychopath.’” Also, an offender’s results on psychological or psychiatric tests are only one of six factors regarding whether he meets the third prong of the sexual psychopathic personality statute—i.e., whether an offender has an utter lack of power to control his sexual impulses. And most importantly, the sexual psychopathic personality statute does not require that the offender be a “clinical psychopath.” *See* Minn. Stat. § 253B.02, subd. 18b (2008) (defining sexual psychopathic personality).

Commitment as a sexual psychopathic personality requires clear and convincing evidence that a person (1) has either emotional instability, impulsive behavior, a lack of customary standards of good judgment, or a failure to appreciate the consequences of personal acts; (2) has, as a result, engaged in a habitual course of sexual misconduct; and (3) has an utter lack of power to control sexual impulses and, therefore, is dangerous to others. Minn. Stat. § 253B.02, subd. 18b. To determine whether an offender has an utter lack of power to control his sexual impulses, courts should consider the nature and frequency of sexual assaults; the degree of violence involved; the relationship or lack thereof between the offender and the victims; the offender’s attitude and mood; the

offender's medical and family history; and the results of psychological and psychiatric testing. *See In re Blodgett*, 510 N.W.2d 910, 915 (Minn. 1994). The record contains clear and convincing evidence to establish that Webber meets the statutory definition of a sexual psychopathic personality.

Both experts testified that Webber is emotionally unstable, that he exhibited impulsive behavior, lacks customary standards of good judgment, and fails to appreciate the consequences of his acts. Webber denied some of his offenses, but he later admitted to them. And when denying his most recent offenses, he suggested that his ex-wife framed him. According to Dr. Reitman, denial, dishonesty, rationalizing, and inconsistency indicate emotional instability. Dr. Reitman noted, "Molestation and rape is certainly a violation of our community standards [and] even today, [Webber] is not demonstrating any remorse or guilt for his actions, because he is denying them." The district court had ample evidence to conclude that Webber fails to appreciate the consequences of his actions; after he was incarcerated for his sexual offenses, he violated the terms of his probation and failed to appear for court dates.

Clear and convincing evidence also shows that Webber engaged in a habitual course of sexual misconduct. Dr. Hoberman noted that Webber's offenses appear habitual because his behavior in his more recent offenses in 2000 and 2001 was very similar to his behavior in his offenses from the early 1990s. He was convicted of sexual offenses in 1991, 1993, and 2001, and the 2001 offenses involved three separate incidents.

The record supports the finding that Webber lacks the power to control his sexual impulses. Dr. Hoberman testified extensively on this element, and his report contains a thorough analysis of the factors that Minnesota courts have used to determine whether an offender utterly lacks power to control himself. Dr. Hoberman testified that Webber displays all the psychological and legal elements of a person who cannot control his sexual impulses. The district court considered all the *Blodgett* factors and other factors, including Webber's failure to control his sexual behavior and lack of an effective relapse prevention plan. Based on all these factors, the district court concluded that clear and convincing evidence established that Webber has an utter lack of power to control his sexual impulses. The record plainly supports the district court's conclusion.

Webber argues that the district court ignored "dynamic factors" that "negate[] a finding of psychopathy." He emphasizes the evidence proving that he has strong family and community support and "access to religious participation"; that he has completed several years of college; and that his offenses were not against strangers. And he maintains that the totality of the evidence was insufficient to show that he has a sexual psychopathic personality. But the district court considered Webber's evidence. The court noted Webber's own testimony and the testimony of his mother, brother, pastor, and former basketball coach. The record also contains extensive, consistent, and uncontroverted testimony from the two experts, who agreed that Webber meets the statutory requirements of a sexual psychopathic personality. Because clear and convincing evidence supports the district court's conclusion that Webber has a sexual

psychopathic personality, Webber's argument that "dynamic factors" prevent his commitment as a sexual psychopathic personality fails.

We hold that clear and convincing evidence shows that Webber has emotional instability, impulsive behavior, a lack of customary standards of good judgment, and a failure to appreciate the consequences of personal acts; has, as a result, engaged in a habitual course of sexual misconduct; and has an utter lack of power to control sexual impulses and, therefore, is dangerous to others. We affirm the district court's order committing Webber as a sexual psychopathic personality.

III

Webber also challenges his commitment on constitutional grounds. He argues that the civil commitment statute violates his right to due process, equal protection, and a jury trial, and his right not to be subject to double jeopardy. He also contends that the sexually dangerous person statute is unconstitutionally vague. This court reviews constitutional challenges de novo. *State v. Johnson*, 689 N.W.2d 247, 253 (Minn. App. 2004), *review denied* (Minn. Jan. 20, 2005).

Substantive Due Process

Webber argues that the civil-commitment statute violates his right to due process because the state showed only that there was a "roughly equal possibility that he may or may not recidivate in the long term" and he is not within "the small portion of sex offenders that are dangerous [and] who find it difficult if not impossible to control their impulses." We need not address the legal basis for this contention because, as discussed, the underlying factual basis contention is false.

Webber also argues that his due process rights were violated because the district court refused to hear his challenge that the Minnesota Sex Offender Treatment Program fails to treat sex offenders. But the final commitment hearing and review of that hearing is for a limited purpose and is not the setting to raise the issue of improper treatment. *See In re Linehan*, 557 N.W.2d 167, 170 (Minn. 1996) (*Linehan II*) (providing that the review hearing regarding indeterminate commitment is to “allow[] the district court to consider the views of the treatment facility before issuing a final commitment order” and to “allow[] the district court to consider whether changes in the patients’s condition render further commitment as an SDP inappropriate”), *vacated and remanded on other grounds*, 522 U.S. 1011, 118 S. Ct. 596 (1997). Our review of Webber’s commitment order is also not the setting in which to raise this challenge because “[g]enerally, the right to treatment issue is not reviewed on appeal from a commitment order.” *In re Wicks*, 364 N.W.2d 844, 847 (Minn. App. 1985), *review denied* (Minn. May 31, 1985).

Equal Protection

Webber asserts that Minnesota’s civil-commitment statute violates his right to equal protection by “singling out sex offenders from other types of more seriously harmful criminals [and by] confining them to a facility that removes them from opportunities to obtain effective treatment.” Webber analogizes Minnesota’s civil commitment of sex offenders to the internment of Japanese-Americans during World War II, preventive detentions involving alleged terrorists of Middle Eastern origin, the segregation of African-Americans in facilities considered “separate but equal,” and the commitment of tuberculosis patients to sanitariums where they were denied effective

antibiotics. Webber addresses caselaw that stands between his theory and his desired result by declaring, “The Minnesota precedent is antiquated and long overdue for reversal.”

Webber’s argument “ignores the fact that the sexual predator poses a danger that is unlike any other.” *Blodgett*, 510 N.W.2d at 917 (rejecting argument that statutory commitment violates equal protection). And this court is “not in position to overturn established supreme court precedent.” *State v. Ward*, 580 N.W.2d 67, 74 (Minn. App. 1998).

Right to a Jury Trial

Webber argues that “[b]ecause the effect of indefinite commitment as a loss of liberty is more severe than most criminal sentences in Minnesota, trial by jury should be accorded under modern views of justice.” But the supreme court rejected that argument long ago. *See Joelson v. O’Keefe*, 594 N.W.2d 905, 910 (Minn. App. 1999) (citing *Kansas v. Hendricks*, 521 U.S. 346, 117 S. Ct. 2071 (1997)), *review denied* (Minn. July 28, 1999).

Double Jeopardy

Webber argues that his civil commitment violates the Double Jeopardy Clauses of the federal and state constitutions. But the United States Supreme Court and the Minnesota Supreme Court have rejected the argument that commitment under either the sexually dangerous person or the sexual psychopathic personality acts violates double jeopardy. *Hendricks*, 521 U.S. at 370, 117 S. Ct. at 2086 (“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.”); *Linehan IV*, 594 N.W.2d at 871–72 (addressing double-jeopardy challenge to the sexually-dangerous-person statute); *Joelson*, 594 N.W.2d at 911–12 (addressing double-jeopardy challenge to sexual-psychopathic-personality statute). Civil commitment does not implicate double jeopardy because it is remedial, and its purpose is treatment rather than punishment. *Call v. Gomez*, 535 N.W.2d 312, 319–20 (Minn. 1995).

Vagueness

Webber argues that Minnesota’s commitment statute’s use of the phrase “adequately control” is unconstitutionally vague and that the standard was “arbitrarily imposed” in his case. A statute that “defines an act in a manner that encourages arbitrary and discriminatory enforcement” or “is so indefinite that people must guess at its meaning” is void for vagueness. *Hard Times Café, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 171 (Minn. App. 2001) (quotation omitted). This court has addressed the alleged vagueness of the phrase “adequate control” many times. *See, e.g., In re Ramey*, 648 N.W.2d 260, 268 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002). In *Ramey* we explained that

Taken in the larger context of the holding in *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.

Id. at 268.

The phrase is also not unconstitutionally vague as applied to Webber. The district court's findings specifically regard Webber's history of harmful sexual conduct; both experts diagnosed Webber with a mental illness and personality disorder and the district court found the diagnoses to be credible; and there is clear and convincing evidence that Webber is highly likely to reoffend.

Because clear and convincing evidence supports the district court's findings that Webber meets the statutory criteria for commitment as a sexually dangerous person and as a sexual psychopathic personality, and because none of Webber's constitutional arguments has merit, we affirm the district court's order for indeterminate civil commitment.

Affirmed.