STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2062

In the Matter of the Civil Commitment of: Reginald Eddie McKinley.

Filed May 5, 2009
Affirmed
Kalitowski, Judge

Ramsey County District Court
File No. 62-MH-PR-07-483

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Melinda S. Elledge, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 560, St. Paul, MN 55102 (for respondent Ramsey County)

Considered and decided by Kalitowski, Presiding Judge; Lansing, Judge; and Schellhas, Judge.

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

KALITOWSKI, Judge

Appellant Reginald Eddie McKinley challenges the district court's decision to commit him for an indeterminate length as a sexually dangerous person, arguing that (1) he does not meet the statutory criteria to be committed as a sexually dangerous person and (2) there are less restrictive alternatives available. We affirm.

D E C I S I O N

The district court may civilly commit a person under the Minnesota Commitment and Treatment Act if it finds by clear and convincing evidence the need for commitment. Minn. Stat. § 253B.18, subd. 1(a) (2008). "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). On appeal from a commitment order, we defer to the district court's findings of fact, and we will not reverse those findings unless they are clearly erroneous. *In re Ramey*, 648 N.W.2d 260, 269 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002). But whether the evidence is sufficient to meet the statutory requirements for commitment is a question of law. *In re Martin*, 661 N.W.2d 632, 638 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003).

I.

Appellant argues that the record lacks clear and convincing evidence to support the district court's conclusion that he is a sexually dangerous person. We disagree.

A sexually dangerous person is 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) (2008).

Course of harmful sexual conduct

Appellant contends that his history does not constitute a course of harmful sexual conduct because he denies committing the offense for which a jury convicted him in 2000[1] and also because his other harmful sexual conduct occurred over 25 years ago.

"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). There is a rebuttable presumption that conduct constituting criminal sexual conduct in the first through fourth degrees constitutes harmful sexual conduct. *Id.*, subd. 7a(b). And if the conduct was motivated by a person's sexual impulses or conduct that was part of a pattern of behavior that had criminal sexual conduct as a goal, then the presumption also applies to conduct that constitutes assault in the second degree or terroristic threats. *Id.*

Here, there is a statutory presumption that appellant's four criminal-sexual-conduct convictions constitute harmful sexual conduct. Additionally, the district court determined that appellant engaged in other conduct constituting harmful sexual conduct. Appellant submitted no evidence to rebut the presumption that he engaged in harmful sexual conduct.

The Minnesota Commitment and Treatment Act does not define the term "course" or specify the minimum number of incidents necessary to qualify as a "course." *See* Minn. Stat. § 253B.01-.23. This court has defined "course" as a "systematic or orderly

[1] We upheld this conviction in *State v. McKinley*, No. C7-00-1263, 2001 WL 506530 (Minn. App. May 15, 2001).

succession; a sequence." *In re Stone*, 711 N.W.2d 831, 837 (Minn. App. 2006) (quotation and citation omitted), *review denied* (Minn. June 20, 2006). The incidents establishing a course of conduct need not be recent and may extend over a long period of time. *Id.*

Here, the district court found that there is clear and convincing evidence that appellant has engaged in a "course" of harmful sexual conduct. Appellant submitted nothing to oppose this finding and we reject appellant's claim that because he denies committing the offense for which he was convicted in 2000, he therefore did not engage in a course of conduct. Because the incidents establishing a course of conduct may extend over a long period of time and because there is substantial evidence in the record of appellant's history of harmful sexual conduct over the past 28 years, we conclude that clear and convincing evidence supports the district court's finding that appellant engaged in a course of harmful sexual conduct.

Manifests a sexual, personality, or other mental disorder or dysfunction

Appellant denies that he manifests a sexual, personality, or other mental disorder or dysfunction. Appellant argues that because the initial reports of the examining physicians were based on records, rather than personal evaluations, we should remand for an evaluation of his present mental condition. We disagree.

Appellant correctly notes that for purposes of his interim commitment, the examiners relied solely on appellant's records, rather than personal evaluations. But the evidence indicates that the examiners relied on records because appellant refused to participate in the examination process. And the evidence does not support appellant's

contention that the mental evaluations for his final determination did not include personal evaluations. Drs. Meyers and Alberg separately met with appellant in August 2008 to conduct an evaluation of appellant before his final determination hearing. Based on these evaluations, the doctors submitted reports supported by their testimony that diagnosed appellant with Paraphilia; Axis I: Chemical Dependency Polysubstance and Sexual Sadism; Axis II: AntiSocial Personality Disorder. Appellant submitted no evidence in opposition to the doctors' diagnoses.

We conclude that clear and convincing evidence supports the district court's determination that appellant manifests a sexual, personality, or other disorder or dysfunction.

Likely to engage in acts of harmful sexual conduct

Appellant claims that there is not clear and convincing evidence to show that he is likely to reoffend, arguing that the examiners' conclusions to the contrary are premised on base-rate statistics and not personal evaluations. We disagree.

A district court should consider six factors in determining whether an offender is highly likely to reoffend: (1) the offender's relevant demographic traits; (2) the offender's history of violent behavior; (3) the base-rate statistics for violent behavior among individuals with the offender's background; (4) sources of stress in the offender's environment; (5) the similarity of the present or future context to past contexts in which the offender has used violence; and (6) the offender's record with respect to sex therapy programs. *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994).

Here, the district court's interim order addressed each of the *Linehan* factors in reaching its conclusion that there is clear and convincing evidence that it is highly likely appellant will reoffend. Both Drs. Meyers and Alberg testified at appellant's interim hearing that, although unable to administer psychological tests on appellant as a result of his refusal to participate, appellant is highly likely to reoffend. Appellant does not challenge the *Linehan* factors other than to claim that the examining doctors' conclusions are not based on personal evaluation but on base-rate statistics. But the record does not support this claim.

Drs. Alberg and Meyers separately met with appellant before his final determination hearing and before they submitted further evaluations of appellant to the district court. Their subsequent reports state that appellant continues to be a danger to the public and is at a high risk of reoffense. Dr. Meyers testified that appellant's condition was unchanged since the initial commitment. Dr. Alberg testified that appellant is just in the beginning stages of treatment. Staff with the Minnesota Sex Offender Program (the MSOP) also concluded that appellant presents a high risk of reoffense. Appellant submitted no evidence opposing these experts. We conclude that the record contains clear and convincing evidence supporting the district court's determination that it is highly likely that, if released, appellant will reoffend.

In sum, because clear and convincing evidence supports the conclusion that appellant is a sexually dangerous person, we affirm the district court's order committing appellant for an indeterminate length.

II.

The district court concluded that the MSOP is the appropriate and least restrictive alternative available for the confinement, care, and treatment of appellant. Appellant challenges his commitment to the MSOP, arguing that it is not the least restrictive alternative. We review a district court's determination of the least restrictive alternative under the standard of clear error. *Thulin*, 660 N.W.2d at 144.

If the district court finds by clear and convincing evidence that a person is a sexually dangerous person, it shall commit the person to a secure treatment facility or one willing to accept the person under commitment. Minn. Stat. § 253B.18, subd. 1(a). "[T]he court shall commit the patient 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 (2008). "[P]atients have the *opportunity* to prove that a less-restrictive treatment program is available, but they do not have the *right* to be assigned to it." *In re Kindschy*, 634 N.W.2d 723, 731 (Minn. App. 2001) (emphasis in original) (citing Minn. Stat. § 253B.185, subd. 1), *review denied* (Minn. Dec. 19, 2001).

Here, appellant has not met his burden to show by clear and convincing evidence that a less restrictive alternative than commitment to the MSOP is available. Appellant states that Alpha House is an available less restrictive alternative but does not explain how placement in Alpha House is consistent with his needs and the requirements of public safety. Moreover, the two examining physicians testified that a less restrictive

alternative than MSOP was not appropriate at this time. We therefore conclude that the district court did not clearly err in determining that placement with the MSOP is appropriate and the least restrictive alternative available.

Affirmed.