STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0376

In the Matter of the
Civil Commitment of:
Cormell Deandre Williamson.

Filed July 14, 2009
Affirmed
Klaphake, Judge

Renville County District Court
File No. 65-PR-08-3

Bradley A. Kluver, 236 N. Sibley Avenue, Litchfield, MN 55355 (for appellant Williamson)

Lori Swanson, Attorney General, Matthew Frank, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

David J. Torgelson, Renville County Attorney, 800 East DePue, P.O. Box D, Olivia, MN 56277 (for respondent State of Minnesota)

Considered and decided by Kalitowski, Presiding Judge; Klaphake, Judge; and Hudson, Judge.

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

KLAPHAKE, Judge

Appellant Cornell Deandre Williamson challenges the district court's order subjecting him to indeterminate civil commitment as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP). Minn. Stat. § 253B.185 (2008). Appellant argues that (1) the commitment matter was improperly venued in Renville County;

(2) civil commitment under Minn. Stat. § 253B.185 violates the constitutional prohibition against double jeopardy; and (3) the evidence was not sufficient to support the court's conclusion that he met the standards for commitment as SDP and SPP.

Because appellant resided in Renville County at the time of his imprisonment and some of the offenses he committed occurred in Renville County, we conclude that venue was proper. Because both the United States Supreme Court and the Minnesota Supreme Court have determined that civil commitment under this statute and similar statutes does not violate the prohibition against double jeopardy and because the court's commitment decision is supported by clear and convincing evidence, we affirm.

D E C I S I O N

Venue

A petition for civil commitment may be filed in the county in which the patient "has a settlement or is present" or, if the patient is in the custody of the commissioner of corrections, "in the county where the conviction for which the person is incarcerated was entered." Minn. Stat. § 253B.185, subd. 1. Under the Minn. Spec. R. Commitment & Treatment Act 6, a civil commitment petition is filed in the county of financial responsibility, which is defined by Minn. Stat. § 253B.045, subd. 2 (2008), as the county where the patient resided at the time of confinement.

Appellant was convicted in Redwood County, but the convictions included conduct that occurred in Renville County, as charged in the complaint. At the criminal trial, appellant both denied and admitted living in Fairfax in Renville County. Further, at the time of his conviction and sentencing, appellant filed a mandatory Predatory Offender

Change of Information Notice, notifying the state of a change of address, from Fairfax, to the St. Cloud Correctional Facility. The district court's finding that Renville County was the appropriate venue is supported by record evidence and is not clearly erroneous.

Double Jeopardy

Appellant argues that civil commitment under Minn. Stat. § 253B.185 violates the constitutional prohibition against double jeopardy, because civil commitment, although nominally remedial in nature, "has more characteristics of punishment than it has characteristics of treatment."

The Minnesota Supreme Court dealt squarely with this issue in *In re Linehan*, 594 N.W.2d 867, 871-72 (Minn. 1999) (*Linehan IV*). The supreme court interpreted the double jeopardy issue in light of the United States Supreme Court's decision in *Kansas v. Hendricks*, 521 U.S. 346, 117 S. Ct. 2072 (1997), in which the Supreme Court determined that a Kansas commitment law similar to Minnesota law did not violate the prohibitions against double jeopardy or ex post facto laws. *Id.* at 369, 117 S. Ct. at 2085. In *Linehan IV*, the Minnesota Supreme Court concluded the Minnesota law focused on treatment, because a committed person could be released once sufficiently rehabilitated and in control of his or her sexual impulses. 594 N.W.2d at 871. Further, the purpose of the statute was not deterrence or retribution, the aims of criminal statutes; rather, the statute could be invoked only when a person was suffering from a mental or personal disorder that prevented him or her from exercising control over his or her behavior. *Id.* at 872. This court recently reiterated support for this position in *In re Civil Commitment of*

Martin, 661 N.W.2d 632, 641 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003). Appellant has presented no compelling reason for ignoring this precedent.

Clear and Convincing Evidence – SDP

The state must prove that a patient meets the standards for civil commitment as an SDP or SPP by clear and convincing evidence. Minn. Stat. § 253B.18, subd. 1 (2008); *In re Civil Commitment of Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006), *review denied* (Minn. June 20, 2006). We review the district court's factual findings for clear error and the district court's application of the facts to the statutory standard de novo, as a question of law. *Id.*

A "sexually dangerous person" is defined as one who (1) has engaged in a course of harmful sexual conduct; (2) has a sexual, personality, or other mental disorder; and (3) as a result of this disorder, is likely to engage in future acts of harmful sexual conduct. Minn. Stat. § 253B.02, subd. 18c (2008). "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 (2008). Certain conduct, including first-degree criminal sexual conduct, is presumed to create a substantial likelihood of serious physical or emotional harm. *Id.* For purposes of commitment as an SDP, the state need not prove that the patient is unable to control his sexual impulses. *Id.*, subd. 18c.

Appellant argues that the state failed to show a course of harmful sexual conduct, because he was able to live in the community without engaging in harmful sexual conduct, and that the state's experts did not show by clear and convincing evidence that

he is likely to engage in harmful sexual conduct in the future. He does not challenge the existence of an underlying disorder.

A course of harmful sexual conduct has been defined to mean a succession or sequence of actions. *Stone*, 711 N.W.2d at 837. It can include incidents that occur over a period of years, whether charged or not. *Id.* at 837-38.

Here, the two experts concluded that there was a course of harmful sexual conduct, noting that appellant has both juvenile and adult convictions for criminal sexual conduct, beginning when he was 14 years old. The recent convictions involved abuse of children between the ages of eight and ten and occurred over a period of two years. The conduct involved multiple victims and included some incidents that were not charged. The district court's finding that appellant's sexual misconduct constituted a course of conduct "because he committed the sexual acts across time and various settings, they were not interrupted by consequences or treatment, and they progressed in similar fashion in that he coerced and manipulated vulnerable victims for his own gratification" is not clearly erroneous. Appellant's conviction of first-degree criminal sexual conduct presumptively supports a finding of harmful sexual conduct. Minn. Stat. § 253B.02, subd. 7a(b).

Appellant asserts that the experts' use of various actuarial and diagnostic tools does not support a finding that he is likely to commit future acts of harmful sexual conduct. This finding, which differs from the SPP requirement of "utter lack of control," nevertheless involves an element of inability to control behavior. *In re Commitment of Ramey*, 648 N.W.2d 260, 267 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002).

The district court considered the expert evidence in light of the six *Linehan* factors set forth in *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994) (*Linehan I*): (1) demographic characteristics; (2) history of violent behavior; (3) statistical and actuarial models; (4) sources of stress; (5) similarity of current environment to previous environment in which the patient engaged in violent behavior; and (6) record of treatment. *Id.* These factors are useful "in predicting serious danger to the public." *Id.*

As to the first factor, demographic characteristics, the experts noted and the district court found that appellant's age, sex, limited work history, poor adjustment to treatment or incarceration settings, poor relationship history, and "questionable placement options in the community" indicate a higher likelihood for recidivism.

The experts testified and the court found that the second factor, history of violent behavior, also indicated an increased risk of future harmful behavior. Appellant has a history of violent behavior, both sexual and nonsexual, and used violence on at least one occasion in a sexual context and a degree of force in his abuse of children. Appellant lacked access to children during his incarceration, so there were no victims for a period of time, but he had many incidents of disciplinary reports involving angry interactions with prison officials and blatant disregard of rules.

The statistical and actuarial models cited by the experts indicated a moderate to high risk of reoffending. Although there was some variation in results, on the whole the experts agreed that appellant's likelihood of reoffending appeared to be higher than indicated by the models. The court found that this third factor supported commitment.

The fourth *Linehan* factor considers the sources of stress in the patient's environment that "indicate that the person may be predisposed to cope with stress in a violent or nonviolent manner." *Linehan I*, 518 N.W.2d at 614. Both experts agreed that appellant would be subject to significant stress because of required registration as a sex offender, difficulties with housing and employment, and negative public exposure from community notification. Both experts commented that appellant did not have realistic plans for reentry into the community: appellant commented that he preferred to pick up his offender treatment on the street somewhere, and his mother's landlord refused to accept him as a tenant because of his status. The court found that these facts support a finding of a high risk of reoffending.

The fifth *Linehan* factor compares the offense environment to the patient's proposed release environment. *Id.* Although one expert noted that appellant failed to complete sex-offender treatment, would return to a similar environment, and has not shown any ability to manage his behavior based on disciplinary incidents in prison, the other felt that appellant's circumstances would be somewhat different; but this expert also opined that appellant would be unable to comply with parole supervision. Again, the court found that this created a high risk of reoffending.

Finally, as to the last *Linehan* factor, both experts considered appellant a treatment failure and concluded that appellant is highly likely to engage in future harmful sexual conduct. The district court found that their opinions were credible. *See In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995) (stating that when findings rest almost entirely on expert testimony, court's credibility determination is significant).

The district court's findings are not clearly erroneous and its conclusion that appellant should be committed as an SDP is supported by the evidence.

Clear and Convincing Evidence – SPP

A "sexual psychopathic personality" is defined as a person who, because of instability, lack of judgment or understanding, or impulsivity, is rendered "irresponsible for personal conduct with respect to sexual matters," as evidenced by (1) a habitual course of misconduct in sexual matters; (2) an utter lack of control of sexual impulses; and (3) resultant endangerment of other persons. Minn. Stat. § 253B.02, subd. 18b (2008). Appellant challenges the court's findings on his habitual course of conduct and utter lack of control.

According to the record evidence, in 1990 appellant was accused of sexual contact with a four-year old, but he was not adjudicated for that incident. He was adjudicated delinquent for a first-degree criminal sexual conduct offense in 1991 and thereafter spent time in juvenile facilities and prison until paroled in 1996. The underlying conduct involved digital penetration of an eight-month-old girl, resulting in vaginal injury. Following this adjudication, appellant was placed in Boys' Totem Town and other juvenile facilities from 1991-1993. He served time in prison for auto theft and possession of cocaine from 1994-1995 and was on supervised release until April 1996, so he was not at large in the community for extended periods of time.

In 1996, after his release from parole, appellant met S.D. and moved in with her. Appellant was convicted of first-degree criminal sexual conduct involving L.B., A.D., and N.G., young relatives of S.D., between 1997 and 1999. Since 2000, appellant has

been incarcerated, with no access to children. The evidence supports a finding of a habitual course of sexual misconduct involving children, whether by plan, predisposition, or opportunity.

The supreme court set out various factors to consider in determining if a patient lacks the power to control sexual impulses, including: (1) the nature and frequency of the sexual assaults and the degree of violence involved; (2) the relationship between offender and victims; (3) the offender's attitude and mood; (4) the offender's medical and family history; (5) the results of psychiatric testing and evaluation; and (6) any other factor that bears on the predatory sexual impulse and lack of control. *In re Blodgett*, 510 N.W.2d 910, 915 (Minn. 1994). Here, the district court made the following findings:

(1) The court found that appellant had committed sexual misconduct since 1990, including victims from eight months to 10 years of age. Appellant's assault in 1991 caused vaginal injury to an eight-month-old child, and the assaults on L.B. and A.D. involved a degree of force. One expert opined that appellant's assaults were increasing in violence and the court accepted this fact.

(2) In all of the incidents of abuse, appellant had been placed in a position of authority over the children against whom he offended, either as a babysitter or a significant adult. Appellant took advantage of S.D.'s absence, even for short periods of time, to assault L.B., A.D., and N.G. when they were left in his care.

(3) The experts noted that appellant was unaware of the consequences of his behavior, had an angry and dismissive attitude, and was guarded and suspicious.

(4) The court found nothing significant about appellant's medical or family history.

(5) Clinical testing indicated that appellant had a high level of psychopathy, difficulty dealing with authority, and a tendency to minimize his conduct and blame others.

(6) Both experts noted the lack of successful treatment and a relapse prevention plan. Further, one expert testified that appellant engaged in grooming activity. *See In re Bieganowski*, 520 N.W.2d 525, 530 (Minn. App. 1994) (discussing grooming activities and failure to remove oneself from situations with increased risk of offending as indicative of lack of control), *review denied* (Minn. Oct. 27, 1994). The other expert, although disagreeing about the grooming activity, noted appellant's opportunistic tendencies.

Appellant argues that the evidence did not support the conclusion that he utterly lacks control because he was able to live in the community for periods of time without incident.

In *In re Irwin*, 529 N.W.2d 366, 375 (Minn. App. 1995), *review denied* (Minn. May 16, 1995), the experts reached differing opinions about the patient's utter lack of control. One concluded that the patient was not treatable and another concluded that he could be treated in the community; as with appellant here, there was no recent sexual misconduct. Part of the *Irwin* court's reasoning that the patient lacked control of his sexual impulses was that he did not believe he had a problem and therefore did not develop a process to deal with risky situations. *Id.*

In *In re Preston*, 629 N.W.2d 104, 110-11 (Minn. App. 2001), this court discussed the element of utter lack of power to control sexual impulses. This court reiterated the distinction that an SPP is more than "mere sexual promiscuity and other forms of sexual delinquency." *Id.* at 110 (quotation omitted). The key distinction is the utter lack of power to control sexual impulse and the infliction of "injury, loss, pain or other evil on the objects of their uncontrolled and uncontrollable desire." In *Preston*, the patient displayed both grooming and planning behavior and impulsive sexual responses to external factors. *Id.* at 111. The patient argued that he had demonstrated his ability to control his behavior by not reoffending while on bail; the experts testified that a single 10-month period was not sufficient to demonstrate control and that the patient refused to acknowledge the extent of his problem, as shown by the fact that he took a job at Valleyfair, where he was surrounded by his target population. *Id.* The court was persuaded that the patient was more likely to reoffend "because he does not appreciate his problem." *Id.* n.3.

Appellant has repeatedly engaged in harmful sexual conduct with young children. He has engaged in limited grooming behavior, by promising treats and excursions, but most of the crimes appear to be opportunistic—he found himself alone with a child or children and sexually assaulted them. Appellant has not reoffended because he has not had access to children. The district court's conclusion that appellant utterly lacked the power to control his sexual impulses as to children is supported by clear and convincing evidence.

Affirmed.