STATE OF MINNESOTA
IN COURT OF APPEALS
A10-340

In the Matter of the Civil Commitment of: Michael Sean Worth

Filed June 29, 2010
Affirmed
Larkin, Judge

Ramsey County District Court
File No. 62-MH-PR-08-306

Mary M. Huot, St. Paul, Minnesota (for appellant)

Susan Gaertner, Ramsey County Attorney, Stephen P. McLaughlin, Elizabeth C. Henry, Assistant County Attorneys, St. Paul, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Shumaker, Judge; and Connolly, Judge.

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

LARKIN, Judge

In this civil-commitment appeal, appellant argues that (1) his juvenile records from the Michigan Department of Human Services were obtained in violation of his due-process rights; (2) the district court committed prejudicial error by admitting appellant's juvenile records into evidence; (3) the record fails to support the district court's determination that appellant meets the criteria for commitment as a sexually dangerous

person; and (4) the record fails to support the district court's determination that appellant meets the criteria for commitment as a sexual psychopathic personality. We affirm.

FACTS

Appellant Michael Sean Worth committed his first documented act of criminal sexual conduct at age 12, when he sexually assaulted a seven-year-old boy. Appellant explained that he himself had been sexually assaulted by an older boy when he was ten years old and chose to assault his victim because he wanted to "see what it was all about." Appellant selected his victim based on the fact that he was "a smaller kid." Appellant asked the boy to pull down his pants and underwear, and when he refused, appellant offered him $20 to do so. Once the boy's pants and underwear were removed, appellant anally penetrated the boy with his penis from two positions. Afterward, appellant had the boy rub appellant's penis until appellant ejaculated. The boy reported that appellant told him that if he told anyone what happened, "it would happen again." Appellant testified that he knew the boy was terrified but that this fact did not stop him from raping the boy.

Appellant pleaded guilty to first-degree criminal sexual conduct and was placed on probation. A few months later, appellant broke into two houses; he stole liquor from one and placed "900-line" phone calls from the other. Appellant also had behavioral problems at school. As a result of appellant's behavioral problems and criminal offenses, his mother voluntarily terminated her parental rights to appellant. Appellant was made a ward of the state of Michigan, and from ages 12-18, appellant was placed in a number of juvenile facilities in Michigan, Minnesota, and Colorado. Appellant engaged in oral and

anal sex at several of these facilities, was determined to be at high risk for engaging in sexually abusive behavior, and was placed in a Colorado youth center where he participated in a juvenile sex-offender program. Appellant was discharged from the program upon completion in 1997 but was advised to continue sex-offender treatment. Appellant was 18 years old at that time.

Appellant returned to his parents' residence in Minnesota. Less than one month later, he sexually assaulted a 13-year-old female on three occasions in six days. Appellant pleaded guilty to three counts of third-degree criminal sexual conduct. He received stayed prison sentences and was placed on probation. The district court ordered appellant to attend sex-offender treatment as a condition of probation. Appellant was terminated from his treatment program for failing to attend meetings, and his probation was revoked in February 1998. He was jailed but escaped in March 1998. In May 1998, appellant pleaded guilty to a felony-level escape charge and was sentenced to serve 19 months in prison. Appellant's criminal-sexual-conduct sentences were executed concurrently with his escape sentence.

Appellant was released from prison in June 2000, but was returned on a supervised release violation and revocation of parole in August 2000. He was re-released in February 2001 on the condition that he reside at a treatment center and participate in treatment. His conditional release was revoked after he left the center and stopped participating in treatment. Appellant was released again in November 2001, but he was re-imprisoned in December 2001 for failing to participate in treatment. Appellant was

released again in April 2002, and did not violate the terms of his release thereafter. His sentence expired in May 2004.

During the period from April 2002 to May 2004, appellant participated in sex-offender treatment and maintained a full-time job. Appellant maintained a relationship with a girlfriend, but she terminated their relationship because of the restrictions resulting from appellant's level-III-sex-offender status. Appellant moved to South Carolina to live with his parents, where he registered as a sex offender and maintained employment. Appellant later moved back to Minnesota, but he failed to register as a sex offender because he did not want to go through the community-notification process. In August 2005, appellant pleaded guilty to a charge of failure to register as a sex offender. He was sentenced to serve 15 months in prison, was released in July 2006, and was arrested in October 2006 for violating the conditions of his release. Appellant violated three conditions of release between July and October 2006, but none involved the commission of a sexual assault or the failure to participate in treatment. He was released from custody when his sentence expired in December 2006.

Less than three months after his release from prison in December 2006, appellant was accused of sexually assaulting his girlfriend's 13-year-old friend on two occasions. On the first occasion, appellant allegedly approached the girl in a bathroom with his penis exposed, pushed her against a wall, and said "[y]ou know that you have been f---ed before." She managed to escape. On the second occasion, appellant allegedly approached the girl with his penis exposed and touched her vaginal area. He stopped only when she reached for the phone to call the police. Appellant was charged with

third- and fourth-degree criminal sexual conduct, but pleaded guilty to fifth-degree criminal sexual conduct, admitting only that he grabbed the victim's breast. Appellant also pleaded guilty to a second felony failure-to-register offense and was committed to prison for 30 months.

While appellant was incarcerated, he was examined by Dr. Peter Meyers for the purpose of determining whether the county should petition for his civil commitment. Dr. Meyers interviewed appellant and reviewed all provided documentation. Dr. Meyers diagnosed appellant with paraphilia and described him as a "patterned sex offender whose primary deviant interests . . . center on girls entering puberty or post puberty." Ramsey County then petitioned to commit appellant as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP). After the petition was filed, the district court appointed Dr. Thomas Alberg as first examiner and Dr. Chad Nelson as second examiner.

The district court held a commitment hearing on November 13, 2008. At this hearing, Dr. Meyers testified that appellant met the statutory elements of an SDP and an SPP, appellant was attracted to adolescent girls, and appellant had a high risk of reoffense. Dr. Alberg testified that appellant met the statutory elements of an SDP and an SPP and was attracted to adolescent girls. Dr. Nelson testified that appellant met the statutory elements of an SDP, but not the statutory elements of an SPP. Dr. Nelson testified that the least restrictive alternative available to appellant would be a stayed commitment, provided that appellant was kept under the jurisdiction of the department of corrections, required to successfully complete sex-offender treatment, and required to

abide by all monitoring and treatment conditions of intensive supervised release. But Dr. Nelson also testified that if this were not a viable option, the least restrictive alternative available to appellant was the Minnesota Sex Offender Program (MSOP).

The district court committed appellant to the MSOP on an interim basis and scheduled a review hearing.[1] Prior to the review hearing, two additional doctors examined appellant. Dr. Gary Hertog of the MSOP reported that appellant continued to meet the statutory elements of an SDP and an SPP and that appellant was likely to engage in further acts of harmful sexual conduct if released into the community. Dr. Michael Farnsworth, who appellant selected as his examiner, also reported that appellant's condition had not changed since his initial commitment and that MSOP was the best choice for the care and treatment of appellant. Dr. Meyers filed another report with the district court in which he also opined that appellant's condition had not changed. Dr. Meyers testified similarly at appellant's review hearing. After the review hearing, the district court ordered appellant's indeterminate commitment to MSOP. This appeal follows.

D E C I S I O N

I.

Appellant first claims that his due-process rights were violated when the district court obtained his juvenile records from the state of Michigan without his permission.

[1] Minnesota law requires a hearing on a final commitment determination to be held within 90 days of the initial commitment, unless the parties agree to postpone the hearing. Minn. Stat. § 253B.18, subd. 2(a) (2008). In this case, the district court postponed the hearing pursuant to appellant's request.

Whether appellant's due-process rights were violated is a constitutional question subject to de novo review. *State v. Netland*, 762 N.W.2d 202, 207 (Minn. 2009).

Article 1, Section 7 of the Minnesota Constitution prohibits the government from depriving an individual of "life, liberty, or property without due process of law." Appellant maintains that he has a property interest in his juvenile records and that he was deprived of this interest without due process of law. Appellant frames his argument in terms of property rights, rather than statutory privilege, asserting that he has a "right of ownership" over his juvenile records and that "[t]he records belong to the provider but the content of those records belongs to the individual." But appellant cites no legal authority supporting his assertion that the content of his juvenile records is his "property." Appellant also fails to explain how the district court's use of his juvenile records deprived him of a property interest or amounted to a taking of property. Finally, appellant does not address what process was due, if in fact he has a property interest in the records, or why the process that was used to obtain the records was constitutionally deficient.

The Minnesota Commitment and Treatment Act (Act) permits certain records to be used in civil-commitment proceedings without the subject's permission and waives any privilege between a patient and "any physician, psychologist, examiner, or social worker who provides information with respect to a patient pursuant to any provision" of the Act. Minn. Stat. § 253B.23, subd. 4 (2008). The Act also allows a county attorney to obtain, pursuant to a court order, "any records or data" needed to determine whether to file a civil-commitment petition and to request such information without a court order if

that information is held by "the Department of Corrections or any probation or parole agency in this state." Minn. Stat. § 253B.185, subd. 1b (2008). And the commissioner of corrections is entitled to obtain private and confidential data pertaining to any inmate sentenced for criminal sexual conduct. Minn. Stat. § 244.05, subd. 7 (2008). Lastly, the Act allows the district court to seal the records of a civil-commitment proceeding upon request, thereby protecting the patient's privacy interests. Minn. Stat. § 253B.23, subd. 9 (2008).

The civil-commitment procedural rules also address access to the patient's records. Rule 13 provides that the county attorney and the court-appointed examiner, as well as their agents and experts retained by them, "shall have access to all of the [patient's] medical records." Minn. Spec. R. Commit. & Treat. Act 13. The rule further provides that medical records "may not be disclosed to any other person without court authorization or the [patient's] signed consent." *Id.* The court administrator must create a separate nonpublic section of the district court's file in which "all medical records shall be filed." Minn. Spec. R. Commit. & Treat. Act 21. "Records in that section . . . shall not be disclosed to the public except by express order of the district court." *Id.*

Thus, the Act and rules provide for access to appellant's juvenile records without his consent and a means of protecting appellant's privacy interests in those records. Appellant does not allege that the Act or rules were violated or explain why the procedures therein fail to ensure due process of law. Normally, we decline to address allegations that are unsupported by legal analysis or citation. *Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994). Generally, an assignment of error in brief

based on "mere assertion" and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (quoting *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971)). Because appellant fails to support his argument that his due-process rights were violated when the district court obtained his juvenile records from Michigan without his permission, and we discern no obvious prejudicial error on inspection, this claim is waived.

II.

Appellant next claims that the district court committed prejudicial error by admitting his juvenile records into evidence. The admissibility of evidence in a commitment case is a matter of the district court's discretion and "will be reversed only if the court has clearly abused its discretion." *In re Commitment of Ramey*, 648 N.W.2d 260, 270 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002).

In commitment proceedings, a district court is required to "admit all relevant evidence." Minn. Stat. § 253B.08, subd. 7 (2008); *see also* Minn. Spec. R. Commit. & Treat. Act 15 (providing that the district court may admit "all relevant, reliable evidence" without requiring foundation witnesses). The Act "requires the district court to determine *relevancy* in accordance with the rules of evidence" but "does not require application of other rules of evidence." *In re Commitment of Williams*, 735 N.W.2d 727, 731 (Minn. App. 2007) (emphasis added), *review denied* (Minn. Sept. 26, 2007). "Relevant evidence" is that which has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it

would be without the evidence." Minn. R. Evid. 401. Because other exclusionary rules of evidence do not apply in commitment proceedings, there is a "presumption of admissibility" in these proceedings. *Williams*, 735 N.W.2d at 731.

Appellant argues that his juvenile records are not relevant to his current psychological situation and should not be used to project his future behavior. But to be relevant, evidence must merely have "any tendency" to make the existence of a relevant fact more or less probable. Minn. R. Evid. 401. And in *In re Linehan* (*Linehan I*), the supreme court identified a proposed patient's history of violent behavior, the similarity of the patient's present and past uses of violence, and the patient's record of sex-therapy programming as factors to be considered when evaluating the criteria for civil commitment. 518 N.W.2d 609, 614 (Minn. 1994). Accordingly, a person's juvenile delinquency and treatment histories are relevant when determining whether the person qualifies for civil commitment. Because appellant's juvenile records contain evidence regarding his sexual-offense and treatment histories, the records were relevant. Moreover, access to appellant's juvenile history was necessary to allow the expert examiners to thoroughly analyze, and the district court to make an informed determination, whether appellant should be committed.

Appellant also argues that the admission of his juvenile records was unfairly prejudicial, in that the records were incomplete and "present[ed] incomplete scenarios from varying agencies that had contact with" appellant during his youth. But appellant does not explain how the records are incomplete, and in fact admits that "it is unknown what records are missing or destroyed." In denying appellant's motion in limine, the

district court stated that "[t]here is nothing . . . that indicates the records provided were incomplete or unreliable." Similar to appellant's argument on appeal, his argument before the district court consisted only of a "broad assertion that the records provided . . . are unreliable because they are incomplete," and he offered "no details as to what information is missing or should have been provided." Appellant's unsupported assertion that his records are incomplete and unreliable does not establish that the district court abused its discretion by admitting those records.

Lastly, appellant suggests that the records are hearsay. But, as discussed above, the district court was not required to apply the evidentiary rule excluding hearsay in this commitment proceeding. *See Williams*, 735 N.W.2d at 731 (stating that the Act "requires the district court to determine relevancy in accordance with the rules of evidence" but "does not require application of other rules of evidence"). The district court did not abuse its discretion by receiving appellant's juvenile records as evidence at the commitment hearing.

III.

Appellant also challenges the district court's conclusion that he meets the criteria for commitment as a SDP. The elements of a petition for civil commitment must be proved by clear and convincing evidence. Minn. Stat. §§ 253B.18, subd. 1(a), .185, subd. 1 (2008). On review, this court defers to the district court's findings of fact and will not reverse those findings unless they are clearly erroneous. *Ramey*, 648 N.W.2d at 269. But this court reviews 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).

A person is considered an SDP if that person:

> (1) has engaged in a course of harmful sexual conduct as defined in subdivision 7a;
> (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 as defined in subdivision 7a.

Minn. Stat. § 253B.02, subd. 18c (2008).

While the Act does not define what constitutes a "course" of harmful sexual conduct, this court has defined "course" as "a systematic or orderly succession; a sequence." *Ramey*, 648 N.W.2d at 268 (quotation omitted). Conduct need not be recent to be considered as part of a course of harmful sexual conduct. *In re Commitment of Stone*, 711 N.W.2d 831, 837 (Minn. App. 2006), *review denied* (Minn. June 20, 2006). "Harmful sexual conduct" is defined as "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 certain conduct, including criminal sexual conduct in the first, second, third, and fourth degrees, "creates a substantial likelihood that a victim will suffer serious physical or emotional harm." *Id.*, subd. 7a(b) (2008). The Act does not require that a victim suffer actual physical or emotional harm; rather, the Act focuses on whether the conduct creates a substantial likelihood of such harm. *In re Commitment of Martin*, 661 N.W.2d 632, 639 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003).

Appellant argues that he does not meet the statutory definition of an SDP because the county did not prove by clear and convincing evidence that he engaged in a course of harmful sexual conduct. Appellant asserts that his 1997 third-degree criminal-sexual-conduct convictions should not have been considered in evaluating whether he committed a course of harmful sexual conduct, arguing that the victim was willing and that the offenses therefore did not involve nonconsensual sexual behavior. This argument is unavailing. At the time of the offenses, the victim was 13 years old, and appellant was 18 years old. *See* Minn. Stat. § 609.344, subd. 1(b) (1996) (providing that third-degree criminal sexual conduct occurs when "the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant."). Consent is not a defense to third-degree criminal sexual conduct involving a minor. *See id.* (stating that "[c]onsent by the complainant is not a defense"). Moreover, there is a rebuttable presumption that these offenses created a substantial likelihood that the victim would suffer serious physical or emotional harm. Minn. Stat. § 253B.02, subd. 7a(b).

Appellant also asserts that his fifth-degree criminal-sexual-conduct conviction should not have been considered in evaluating whether he committed a course of harmful sexual conduct, primarily because he denies that he committed the offense. But because appellant pleaded guilty to this offense, his denial here is unavailing. Appellant also argues that his conviction of this offense does not support a determination that the underlying conduct was harmful sexual conduct. There is no statutory presumption that fifth-degree criminal sexual conduct creates a substantial likelihood of serious physical or emotional harm. *See id.* And no evidence was introduced to show that the victim of this

offense was substantially likely to suffer such harm. But even if we disregard this offense, appellant's plea of guilty to first-degree criminal sexual conduct and his convictions of third-degree criminal sexual conduct provide clear and convincing support for the district court's conclusion that appellant engaged in a course of harmful sexual conduct.

Appellant next argues that the county did not prove by clear and convincing evidence that he has manifested a sexual, personality, or other mental disorder. In support of his argument, appellant cites Dr. Meyers's testimony that appellant was responding to treatment and exhibiting an improved attitude, appellant's professed desire to better himself, and appellant's mother's testimony that her son has undergone a "tremendous change." Dr. Meyers, Dr. Alberg, and Dr. Nelson each diagnosed appellant with paraphilia and social personality disorder. Appellant does not dispute these diagnoses. Instead, his argument appears to pertain to whether he continued to manifest a mental disorder at the time of commitment.

As to appellant's mental disorder, Dr. Meyers testified at the review hearing that appellant had "a huge problem, which is called paraphilia, non-consent adolescent female; and that is a sexual deviancy diagnosis." When asked if he thought appellant had changed, Dr. Meyers answered that "his demeanor has changed." But Dr. Meyers expressed concern regarding appellant's continued denial of his 2007 sexual offenses. This testimony, coupled with the fact that two other doctors also diagnosed appellant with paraphilia and other disorders, indicates that appellant continued to manifest a sexual disorder at the time of his review hearing. While appellant's mother testified that

appellant's attitude had improved, there is no indication that she is qualified to diagnose appellant's mental state, and her opinion does not refute Dr. Meyers's testimony.

Finally, appellant argues that he is not likely to engage in harmful sexual activity. The supreme court has construed the statutory phrase "likely to engage in acts of harmful sexual conduct" to require a showing that the offender is "highly likely" to engage in harmful sexual conduct. *In re Linehan*, 557 N.W.2d 171, 190 (Minn. 1996) (*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). In support of this argument, appellant states that he is under the jurisdiction of the department of corrections until 2018. Additionally, appellant states that he is sorry for his actions and is willing to engage in treatment through the department's supervised-release program. But at appellant's review hearing, Dr. Meyers reiterated that statistical tools showed appellant to be "at high risk" for sexual reoffense. And while appellant may be unlikely to reoffend while incarcerated, he previously violated the terms of conditional release on numerous occasions and sexually reoffended soon after his release from prison in December 2006. Thus, appellant's argument that he is not likely to engage in harmful sexual activity is unpersuasive. The district court's conclusion that appellant meets the standards for commitment as an SDP is supported by clear and convincing evidence.

IV.

Finally, appellant claims that the record fails to support the district court's conclusion that he meets the criteria for commitment as an SPP. 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." *Thulin*, 660 N.W.2d at 144.

The Act defines an SPP as

> the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters, if the person has evidenced, by a habitual course of misconduct in sexual matters, an utter lack of power to control the person's sexual impulses and, as a result, is dangerous to other persons.

Minn. Stat. § 253B.02, subd. 18b (2008). In order to commit an individual as an SPP, the district court must find (1) a habitual course of misconduct involving sexual matters, (2) an utter lack of power to control sexual impulses, and (3) dangerousness to others. *Linehan I*, 518 N.W.2d at 613.

Appellant claims that he does not meet the statutory definition of an SPP, arguing that the county did not prove by clear and convincing evidence that he has "emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts." *See* Minn. Stat. § 253B.02, subd. 18b. Appellant asserts that he has shown three years of emotional stability, good judgment, and appreciation for the consequences of his behavior. In support of his assertion, appellant cites Dr. Meyers's testimony at his review hearing that appellant's attitude was "refreshing" and that he is continuing to challenge any negative thoughts that he has. Appellant also cites his own testimony that his attitude has changed, the fact that he was chosen for employment over 20 other patients at St. Peter,

and his willingness to participate in treatment. Lastly, appellant cites his mother's testimony that appellant has recently exhibited a more positive attitude and thoughtful behavior.

But the testimony of appellant and his mother regarding recent changes in appellant's attitude do not rebut Dr. Meyers's testimony at the review hearing that appellant continued to meet the standards for commitment as an SPP. While Dr. Meyers noted improvements in appellant's attitude, he remained concerned with the fact that appellant continued to deny the 2007 criminal-sexual-conduct offenses. Dr. Meyers testified that appellant could not "move on in treatment" without coming to terms with these offenses. Dr. Meyers maintained that appellant is an untreated sexual offender and that "nothing ha[d] changed in terms of lessening" appellant's risk of reoffending. On this record, there is clear and convincing evidence to support the district court's conclusion that appellant meets the standards for commitment as an SPP.

Affirmed.

Dated:

Judge Michelle A. Larkin