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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1464

In the Matter of the Civil Commitment of: Daniel Leroy Patten.

Filed February 4, 2019
Affirmed
Reyes, Judge

Aitkin County District Court
File No. 01-PR-17-186

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Keith Ellison, Minnesota Attorney General, Angel Helseth Kiese, Assistant Attorney General, St. Paul, Minnesota; and

Jim Ratz, Aitkin County Attorney, Aitkin, Minnesota (for respondent)

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

UNPUBLISHED OPINION

REYES, Judge

Appellant challenges his commitment to the Minnesota Sex Offender Program (MSOP) as a sexually dangerous person (SDP) and sexual psychopathic personality (SPP), arguing that the district court erred in determining that: (1) he was highly likely to reoffend with harmful sexual conduct and (2) he has the requisite mental disorder or dysfunction.

Appellant also argues that the district court should have addressed his constitutional challenge to the discharge criteria. We affirm.

FACTS

Appellant Daniel Leroy Patten is a 58-year-old man who has a significant criminal history and has spent most of his adult life incarcerated. He also has a lengthy history of sexual misconduct, exhibiting predatory impulses since he was a teenager, which escalated as he got older. While many of the incidents of sexual misconduct were not charged, appellant has admitted to them over time as a part of his treatment. In addition to the juvenile and uncharged offenses, appellant's three criminal convictions are worth briefly noting.

In 1978, when appellant was 18, he and a friend abducted a woman, S.P.B., who saw them hitchhiking and picked them up. Appellant threated S.P.B. with a knife, forced her into the trunk, and groped her breasts and genitals. S.P.B. was able to escape and call law enforcement. Appellant pleaded guilty to kidnapping in 1979. When describing this offense at his commitment hearing, appellant admitted that, had his friend not been there, he would have raped S.P.B.

In 1983, when appellant was out on parole from his previous offense, he raped an adult woman, V.L.C., orally, anally, and vaginally. Appellant threatened her with a knife and taped her wrists together during the assault. A jury found appellant guilty of three counts of criminal sexual conduct in the first degree, and the district court sentenced appellant to 95 months in prison. During his commitment trial, appellant admitted to this offense, stating that, at the time, he "really wanted to control her" and make her his slave.

In December 1990, while appellant was released on furlough status, he committed his most recent offense. Appellant kidnapped, at gunpoint, L.L.S. and her two adult daughters from a gas station. Appellant forced L.L.S. to perform oral sex on him and shot her in the eye with a pellet gun. He forced her two daughters to perform oral sex on him, promising to take L.L.S. to the hospital if they did. Eventually, the daughters were able to escape and take L.L.S. to a hospital, where she had multiple surgeries and ultimately required a prosthetic eye. In June 1991, a jury found appellant guilty of first-degree attempted murder, first-degree assault, two counts of second-degree assault, three counts of kidnapping, four counts of first-degree criminal sexual conduct, and first-degree burglary. In describing the offenses at his commitment hearing, appellant testified that his thoughts at the time were, "I'm going to dominate all three of these women."

In September 2017, Aitkin County (the county) filed a petition to have appellant committed as an SDP and SPP. The district court assigned a first examiner, Dr. Peter Marston, who submitted his report in December 2017.[1] In his report, Dr. Marston opined that appellant met the criteria for both an SDP and SPP, diagnosing appellant with sexual sadism, antisocial-personality disorder, and chemical-use disorder (alcohol and cannabis).

The district court held a civil-commitment court trial on February 20-22, 2018. The court heard testimony from MSOP Reintegration Director Scott Halvorson, Dr. Marston, DOC Supervised Release Agent Aric Welle, and appellant.

[1] Appellant refused to participate in an interview with Dr. Marston, so his report was based on the available documentation. Appellant also declined to retain a second examiner.

On July 5, 2018, the district court issued its findings of fact, conclusions of law, and order for judgment. The district court recounted appellant's history of sexual and criminal behavior. In making its decision, the court found it:

> highly inappropriate to place Respondent in the community. Respondent is highly likely to reoffend sexually without sex offender treatment and has an utter lack of power to control his sexual impulses. Respondent needs sex offender treatment in a secure program. The MSOP program is the best placement for Respondent at this time, considering its ability to help Respondent learn certain essential concepts and demonstrate that he can live by those concepts through a gradual release into the community. Respondent is at a risk level and is a danger to society at this time.

The district court concluded that clear and convincing evidence supported appellant's commitment as both an SDP and SPP and indeterminately committed appellant to the MSOP at Moose Lake. This appeals follows.

D E C I S I O N

A person may be civilly committed as an SDP or SPP if the county proves the statutory criteria by clear and convincing evidence. Minn. Stat. § 253D.07, subd. 3 (2018). "We review the district court's factual findings under a clear error standard to determine whether they are supported by the record as a whole," *In re Civil Commitment of Ince*, 847 N.W.2d 13, 22 (Minn. 2014), and view the record in the light most favorable to the findings, *In re Civil Commitment of Spicer*, 853 N.W.2d 803, 807 (Minn. App. 2014). But whether the evidence is sufficient to meet the statutory requirements for commitment is a question of law, which this court reviews de novo. *In re Civil Commitment of Martin,* 661 N.W.2d 632, 638 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003).

Because "the commitment determination . . . is a difficult task often requiring consideration of a voluminous and complex record followed by a careful balancing of all the relevant facts," the district court is in the best position to weigh the evidence and assess credibility. *Ince*, 847 N.W.2d at 23-24 (quotations omitted). Consequently, "[w]e give due deference to the district court as the best judge of the credibility of witnesses," *In re Civil Commitment of Crosby*, 824 N.W.2d 351, 356 (Minn. App. 2013), *review denied* (Minn. Mar. 27, 2013)

I. The district court did not err in committing appellant as an SDP.

Appellant argues that the district court erred in committing him as an SDP because (1) he does not presently have the requisite sexual, antisocial, or mental disorder and (2) the record does not support the finding that he is highly likely to reoffend. We are not persuaded.

A person may be committed as an SDP if the person: (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. § 253D.02, subd. 16(a)(1)-(3) (2018). The SDP statute does not require the state to prove that the person has an inability to control his sexual impulses. *Id.*, subd. 16(b) (2018). In order to commit a person as an SDP, there must be clear and convincing evidence that a person is "highly likely" to engage in future acts of harmful sexual conduct. *Ince*, 847 N.W.2d at 21. Appellant stipulated that he engaged in a habitual course of sexual misconduct, so the only issue on appeal is whether elements two and three were satisfied by sufficient evidence.

A. The county presented sufficient evidence to establish that appellant has the required sexual, personality, or mental disorder.

Appellant argues that the second element for commitment as an SDP is not met because the record does not support the finding that appellant has a sexual, personality, or other mental dysfunction. We disagree.

The district court found "by clear and convincing evidence, that [appellant] has manifested a sexual, personality, or other mental disorder or dysfunction" based on the diagnoses by the court-appointed examiner, Dr. Marston. At trial, Dr. Marston testified that appellant has a sexual, personality, or other mental disorder, within the meaning of the statute. Dr. Marston diagnosed appellant with three different disorders.

Dr. Marston diagnosed appellant with sexual sadism, based on his pattern of offenses that included "the domination and humiliation of victims and causing them pain and suffering that is fused with anger and hostility." Dr. Marston opined that appellant's second and third convicted offenses definitely involved this level of violence coupled with domination. Appellant admitted that during his two most recent offenses, his goal was to "dominate" and "control" his female victims.

The district court agreed with Dr. Marston's diagnoses, crediting his testimony that appellant has manifested sexual sadism, antisocial-personality disorder, and alcohol- and cannabis-use disorder. Appellant argues that, because his offenses occurred nearly 30 years ago, there is no evidence that he *currently* presents with symptoms of any disorder. However, as Dr. Marston explained, particularly with reference to sexual sadism, "it's

generally considered to be a . . . very long-term type of disorder, and so . . . once someone exhibits this . . . one begins to conclude . . . that this is probably a lifetime disorder."

The record, including appellant's criminal history and Dr. Marston's diagnoses, supports the district court's finding that appellant has a mental disorder sufficient to satisfy the second element of the SDP statute.

B. The county presented sufficient evidence to establish that appellant is highly likely to reoffend.

Appellant challenges the district court's finding that element three of the SDP statute was satisfied, arguing that the record does not indicate that he is highly likely to reoffend. We disagree.

To determine whether a person is highly likely to reoffend, a district court must engage in a "multi-factor analysis." *Ince*, 847 N.W.2d at 23. The multi-factor analysis includes consideration of the following six factors, known as the *Linehan* factors:

> (1) the person's relevant demographic characteristics (*e.g.,* age, education, etc.); (2) the person's history of violent behavior (paying particular attention to recency, severity, and frequency of violent acts); (3) the base rate statistics for violent behavior among individuals of this person's background (*e.g.,* data showing the rate at which rapists recidivate, the correlation between age and criminal sexual activity, etc.); (4) the sources of stress in the environment (cognitive and affective factors which indicate that 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 person has used violence in the past; and (6) the person's record with respect to sex therapy programs.

Id. at 22 (quoting *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994)). The multi-factor analysis may include other relevant evidence and information and includes the actuarial-

assessment evidence used by the experts. *Id*. at 24. No single factor is determinative of this issue. *In re Civil Commitment of Navratil*, 799 N.W.2d 643, 649 (Minn. App. 2011).

The district court addressed the *Linehan* factors, and found Dr. Marston's analysis persuasive. The first factor is the person's demographic characteristics. Dr. Marston explained that appellant's age does decrease his relative risk of reoffending under this factor. However, Dr. Marston also reported that appellant had an increased risk to reoffend here because he has never developed a satisfactory relationship with a female, has no family or other type of support system in place, and has no history of meaningful participation in society, such as maintaining employment.

The second factor, the person's history of violent behavior, indicated appellant's risk to reoffend due to the extreme severity of his past offenses. Dr. Marston explained that appellant has been confined since his 1990 offense in which he exhibited "profoundly extreme physical violence and profoundly extreme sexual violence."

The third factor, base-rate statistics for violent behavior, also demonstrated a risk to reoffend based on Dr. Marston's finding that appellant's "deviant sexual orientation, sexual sadism, in combination with his psychopathy multiplicatively increases his risk." Dr. Marston referenced the Static-99R actuarial tool, which placed appellant at a well-above-average risk to reoffend.

Fourth, the sources of stress in the environment indicated appellant's danger to reoffend because, as Dr. Marston reported, as a level-three sex offender, appellant would have difficulty developing relationships and finding employment and housing. The fact

that appellant had no relapse-prevention plan or planned methods to manage his sexual impulses also significantly increased his risk of reoffending.

The fifth *Linehan* factor, the similarity of the present or future contexts to those in which the person used violence in the past, also indicated a high likelihood of reoffense due to appellant's very large victim pool (adult females). Dr. Marston reported that appellant would be restricted by the Intensive Supervised Release period of one year and an additional 11 to 12 years of supervised release, but appellant would not face any particular restraints in terms of his access to victims.

The last *Linehan* factor, the person's record with respect to offender treatment programs, also demonstrated appellant's high likelihood to reoffend because he has not completed sex-offender treatment since he reoffended. Dr. Marston noted that "there is no reason to believe that [appellant's] proclivities for violent sex offending are any different than they were 27 years ago, particularly when he has continued to show the same kind of defiance, litigiousness and grossly unreasonable behavior that he has exhibited routinely in the past and when he never followed through to demonstrate with any consistency that anyone should draw a different conclusion."

All of these findings are well supported by the record, including Dr. Marston's testimony, the report prepared by prepetition screener Dr. Lovett, and the DOC psychologist. As appellant admits, all three examiners used the Static-99R test to evaluate his risk of reoffending, and all three found that appellant's scores indicated a "well above average risk." In his testimony, Dr. Marston in particular noted that appellant's reoffending "so quickly after his release" was the most salient factor that indicated appellant's extreme

risk to reoffend. The district court credited this testimony, and the court's evaluation of the credibility of expert witness is particularly significant when the findings of fact rest almost exclusively on the expert's testimony. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995).

Because the third element is also supported by sufficient evidence, the district court did not err in finding that there is clear and convincing evidence that appellant meets the statutory criteria for commitment as an SDP.

II. The district court did not err in committing appellant as an SPP.

Appellant argues that the district court erred in committing him as an SPP. We disagree.

In order to be committed as an SPP, the county must prove by clear and convincing evidence that appellant has: (1) such conditions of emotional instability, impulsiveness of behavior, lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts; (2) a habitual course of misconduct in sexual matters; (3) an utter lack of power to control his sexual impulses; and, as a result (4) is dangerous to other persons. Minn. Stat. §253D.02, subd. 15 (2018).

The Minnesota Supreme Court has distinguished between the SPP statute and the SDP statute. *See In re Linehan*, 594 N.W.2d 867, 875 (Minn. 1999). The SPP statute requires an "utter inability" to control sexual impulses. *Id*. In contrast, the SDP statute is aimed at the person who retains "enough control to plan, wait, and delay the indulgence of their maladies until presented with a high probability of success." *Id.*

Appellant's argument here seems to be that, if he did not meet the criteria for SDP, he cannot meet the heightened standard of "utter inability." Generally, when considering whether a person has an utter lack of power to control his sexual impulses, the district court considers: (1) the nature and frequency of the sexual assaults; (2) the degree of violence involved; (3) the relationship between the offender and the victims; (4) the offender's attitude and mood; (5) the offender's medical and family history; (6) the results of psychological and psychiatric testing and evaluation; and (7) such other factors that bear on the predatory sex impulse and the lack of power to control it. *In re Blodgett*, 510 N.W.2d 910, 915 (Minn. 1994).

In applying the first *Blodgett* factor, Dr. Marston's report stated that appellant's three sexual-offense convictions began by abducting women from their cars, first when he was eighteen. His offenses then escalated from sexual groping in the first offense, to multiple forced sexual acts in the second, and then to "brutal sadistic violence" with multiple victims in the third offense. Dr. Marston noted that appellant committed the last two offenses within just a few days after his release, the first time on parole, and the second time while on furlough for a job search.

With respect to the second factor, the degree of violence, Dr. Marston explained that appellant's behavior was threatening and terrifying to all of the victims in his three offenses. Dr. Marston reported that "all victims in the three incidents were severely traumatized as indicated in the descriptions. There is a stunning absence of apparent empathy or statements of remorse in the record."

In addressing the third factor, the relationship or lack thereof between the offender and victim, Dr. Marston noted that all of appellant's adult victims were strangers, and he abducted and threatened them with extreme violence.

Dr. Marston found the fourth factor, the offender's attitude and mood, reflected in appellant's "extreme impulsiveness and complete failure to consider risks and consequences." Dr. Marston again noted that "[h]is anger toward women and the extremely cruel, violent, sadistic behavior in his last offense, in particular, was profound."

The fifth factor, the results of testing and evaluation, also indicated a risk to reoffend. Dr. Marston reported that the Minnesota Sex Offender Screening Tool (MnSost-3.1.2) indicated a risk level of "moderate" and the Static-99R reported a "well above average" risk.

These findings were corroborated by Dr. Lovett's report, as well as the DOC psychologist's report. The district court credited the reports and trial testimony and agreed with Dr. Marston's evaluation. Sufficient evidence supports the district court's conclusion that the county proved by clear and convincing evidence that appellant should be committed as an SPP.

III. The district court did not err in refusing to hear appellant's constitutional challenge to the discharge criteria.

Appellant contends that the district court erred in finding that his constitutional challenge to the discharge criteria was premature, arguing that, "as a matter of substantive due process, the discharge criteria in Minn. Stat. § 253D.31 are unconstitutional." We are not persuaded.

In *Call v. Gomez*, the supreme court explicitly held that the discharge criteria are to be applied to "persons *committed* as psychopathic personalities," 535 N.W.2d 312, 318 (Minn. 1995) (emphasis added). Appellant has provided no authority for the contention that it is proper to apply or analyze the discharge criteria at the initial commitment stage. The district court correctly limited its ruling to the commitment proceeding before it.

Appellant further argues that, if he currently meets the criteria required for discharge, he cannot be committed, citing *Gomez*. This is a different argument than what he made before the district court, and it is therefore forfeited because "an undecided question is not usually amenable to appellate review." *Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988).

Affirmed.