

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A20-0758**

State of Minnesota,  
Respondent,

vs.

Michael Anthony Lee,  
Appellant.

**Filed June 28, 2021  
Affirmed  
Hooten, Judge**

Carlton County District Court  
File No. 09-CR-17-1709

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Lauri A. Ketola, Carlton County Attorney, Jeffrey L.H. Boucher, Chief Deputy County Attorney, Alexander W. Saumer, Assistant County Attorney, Carlton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Laura G. Heinrich, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Connolly, Judge; and Bratvold, Judge.

**NONPRECEDENTIAL OPINION**

**HOOTEN**, Judge

In this direct appeal from his conviction of fourth-degree assault for striking an employee at the Minnesota Sex Offender Program (MSOP), appellant challenges the

imposition of a mandatory five-year conditional-release term on the basis that it violates his right to equal protection. In support of his equal protection argument, appellant observes that the conditional-release term is mandatory for individuals who are convicted under Minn. Stat. § 609.2231, subd. 3a(b) (2020), which is applicable only to those individuals committed to a secure treatment facility as sex offenders under Minn. Stat. § 253D.07 (2020), while the conditional-release term is not applicable to individuals who are convicted under § 609.2231, subd. 3a(c) (2020), who were committed as mentally ill under Minn. Stat. § 253B.18 (2020). Because we agree with the postconviction court's conclusion that individuals convicted under subdivision 3a(b) are not similarly situated to individuals convicted under subdivision 3a(c), we affirm.

## **FACTS**

At the time of the events giving rise to the present conviction and appeal, appellant Michael Anthony Lee was committed to MSOP at Moose Lake pursuant to Minn. Stat. §§ 253D.01–.36 (2016). Respondent State of Minnesota charged appellant with one count of fourth-degree assault of secure treatment facility personnel in violation of Minn. Stat. § 609.2231, subd. 3a(b) (2016). This charge was based on allegations that, while committed at Moose Lake, appellant struck a security counselor in the head with his fist, causing visible redness and a stinging sensation in the outer ear. Appellant waived his right to trial and entered a guilty plea to the sole charge. Pursuant to an agreement between the parties, the district court sentenced appellant to an executed prison sentence of one year and one day, a downward durational departure from the guidelines sentence. The district

court also imposed a five-year period of conditional release to follow appellant's incarceration, as is mandatory under Minn. Stat. § 609.2231, subd. 3a(e) (2016).

After first filing a notice of appeal with this court, appellant filed a motion to stay the appeal and remand the matter to the district court for postconviction proceedings. We granted appellant's motion, stayed the appeal, and remanded the matter to the district court. Appellant then filed a petition for postconviction relief, requesting an evidentiary hearing and arguing that the mandatory imposition of a five-year period of conditional release for persons convicted under Minn. Stat. § 609.2231, subd. 3a(b), but not persons convicted under Minn. Stat. § 609.2231, subd. 3a(c), violated his equal protection rights under the United States and Minnesota Constitutions.

The district court denied appellant's request for an evidentiary hearing<sup>1</sup> and denied his petition for postconviction relief. In doing so, the district court concluded that persons who are mentally ill and dangerous to the public (MIDP) convicted under subdivision 3a(c) are not similarly situated to sexually dangerous persons and persons with a sexual psychopathic personality (SDP/PSPP) convicted under subdivision 3a(b). This conclusion was based on the district court's observation that "[a]lthough there is a mental illness component to commitment as an [SDP/PSPP patient]," SDP/PSPP patients "are additionally found to have committed a course of habitual sexual misconduct or harmful sexual conduct; to lack control over sexual impulses or [to be] likely to engage in acts of harmful sexual conduct; and [to be] dangerous or harmful to other persons." The district

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<sup>1</sup> Appellant does not argue that the decision to deny him an evidentiary hearing was erroneous.

court reasoned that this distinguished SDP/PSPP patients from MIDP patients because “[n]one of these components apply to those who are committed as [MIDP patients].” Because it concluded that appellant had failed to make the threshold showing that he was similarly situated to those treated differently under the statute in question, the district court did not consider whether the disparate treatment of individuals convicted under subdivisions 3a(b) and 3a(c) is rationally related to any legitimate government interest.

Appellant then moved to dissolve the stay and reinstate this appeal. We granted appellant’s motion, dissolved the stay, and reinstated the present appeal.

## **DECISION**

Appellant argues that the postconviction court erred by concluding that individuals convicted under subdivisions 3a(b) and 3a(c) are not similarly situated. Appellant contends that, because that decision was erroneous, this court should remand the matter with instructions for the postconviction court to consider whether the disparate treatment of these two groups is rationally related to a legitimate governmental interest. Because we agree with the postconviction court’s conclusion that individuals convicted under subdivisions 3a(b) and 3a(c) are not similarly situated, we affirm.

### **I. The postconviction court correctly concluded that individuals convicted under subdivisions 3a(b) and 3a(c) are not similarly situated.**

“We review the denial of a petition for postconviction relief for an abuse of discretion.” *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). “A postconviction court abuses its discretion when it has exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual

findings.” *Id.* (quotation omitted). “Legal issues are reviewed de novo.” *Id.* Whether two groups of persons are similarly situated for equal protection purposes is a question of law that we review de novo. *See State v. Cox*, 798 N.W.2d 517, 522–25 (Minn. 2011).

The Equal Protection Clause of the United States Constitution provides: “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. 14, § 1. Minnesota’s constitution provides: “No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.” Minn. Const. art. 1, § 2. “Both clauses have been analyzed under the same principles and begin with the mandate that all similarly situated individuals shall be treated alike.” *Scott v. Minneapolis Police Relief Ass’n, Inc.*, 615 N.W.2d 66, 74 (Minn. 2000). At the same time, “the guarantee of equal protection does not require that the State treat persons who are differently situated as though they were the same.” *Paquin v. Mack*, 788 N.W.2d 899, 906 (Minn. 2010). “An essential element of an equal protection claim is that the persons claiming disparate treatment must be similarly situated to those to whom they compare themselves.” *Peterson v. Minn. Dep’t of Labor and Indus.*, 591 N.W.2d 76, 79 (Minn. App. 1999) (quotation omitted), *review denied* (Minn. May 18, 1999).

It follows from these general principles that “[e]qual protection of the laws is not denied by a statute prescribing the punishment to be inflicted on a person convicted of crime, unless it prescribes different punishments for the same acts committed under the same circumstances by persons in like situation.” *Cox*, 798 N.W.2d at 522 (alteration in original) (quotation omitted). “[I]n order for a defendant to prevail on an equal-protection

claim based on the disparity in sentencing for two different offenses, the defendant must first show that a person who is convicted of committing one offense is similarly situated to people who are convicted of committing the other offense.” *Id.* at 523. “In order to demonstrate this, a defendant must show that the two statutes prohibit the same conduct.” *Id.* If an appellant can make a threshold showing that he is similarly situated to those who receive disparate treatment under the same statute, the statute is reviewed under a rational basis standard, provided that it does not involve a suspect classification or a fundamental right. *Scott*, 615 N.W.2d at 74. A statute reviewed under the rational basis standard is “presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest.” *Id.* (quotation omitted).

Minnesota law provides for the commitment both of MIDP patients and SDP/PSPP patients. Minn. Stat. §§ 253B.18, 253D.07. The procedures for commitment of both of these groups of persons were formerly set forth in Minn. Stat. §§ 253B.001–.24 (2012). In 2013, the legislature made the decision to separate the procedures for the commitment of MIDP and SDP/PSPP patients. *See* Minn. Stat. §§ 253B.001–.24 (2012 & Supp. 2013), 253D.01–.36 (Supp. 2013).

The procedures for commitment of MIDP patients are now set forth in Minn. Stat. §§ 253B.001–.24 (2020). Under Minn. Stat. § 253B.02, subd. 17:

A “person who has a mental illness and is dangerous to the public” is a person:

(1) who has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, and is

manifested by instances of grossly disturbed behavior or faulty perceptions; and

(2) who as a result of that impairment presents a clear danger to the safety of others as demonstrated by the facts that (i) the person has engaged in an overt act causing or attempting to cause serious physical harm to another and (ii) there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another.

A person can only be judicially committed as an MIDP patient if (1) an interested person applies to the appropriate county for conduct of a preliminary investigation and then files a petition for commitment or (2) the proposed patient has been acquitted of a crime as a result of mental illness and the county attorney is therefore required to file a petition for commitment. Minn. Stat. § 253B.07. When a petition for commitment is filed under either circumstance, the district court must then hold a hearing on the petition. Minn. Stat. § 253B.08. If, after holding such a hearing,

the court finds by clear and convincing evidence that the proposed patient is a person who poses a risk of harm due to mental illness . . . and after careful consideration of reasonable alternative dispositions . . . it finds that there is no suitable alternative to judicial commitment, the court shall commit the patient to the least restrictive treatment program or alternative programs which can meet the patient’s treatment needs.

Minn. Stat. § 253B.09, subd. 1.

The procedures for commitment of SDP/PSPP patients are now set forth in Minn. Stat. §§ 253D.01–.36 (2020). Under Minn. Stat. § 253D.02, subd. 16:

A “sexually dangerous person” means 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.

Under Minn. Stat. § 253D.02, subd. 15:

“Sexual psychopathic personality” means 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.

A person can only be judicially committed as an SDP/PSPP patient if the county attorney for the relevant county petitions for commitment of the proposed patient. Minn. Stat. § 253D.07, subd. 1. A commitment proceeding is then held under Minn. Stat. §§ 253B.07–.08, and

[i]f the court finds by clear and convincing evidence that the respondent is a sexually dangerous person or a person with a sexual psychopathic personality, the court shall commit the person to a secure treatment facility unless the person establishes by clear and convincing evidence that a less restrictive treatment program is available, is willing to accept the respondent under commitment, and is consistent with the person’s treatment needs and the requirements of public safety.

Minn. Stat. § 253D.07, subd. 3.

With this understanding of the varying commitment procedures for MIDP and SDP/PSPP patients, we turn to the statute in question. Minn. Stat. § 609.2231, subd. 3a (2020), makes the assault of secure treatment facility personnel by committed persons a



felony. Under subdivision 3a(b), an SDP/PSPP patient committed pursuant to Minn. Stat. §§ 253D.01–.36 who (1) assaults the person of and inflicts demonstrable bodily harm upon, or (2) intentionally throws or otherwise transfers bodily fluids or feces at or onto the person of, an employee or other individual who provides care or treatment at a secure treatment facility, while the person is engaged in the performance of a duty imposed by law, is guilty of a felony. Under subdivision 3a(c), an MIDP patient committed pursuant to Minn. Stat. § 253B.18 who (1) assaults the person of and inflicts demonstrable bodily harm upon, or (2) intentionally throws or otherwise transfers urine, blood, semen, or feces onto the person of, an employee or other individual who supervises and works directly with patients at a secure treatment facility, while the person is engaged in the performance of a duty imposed by law, policy, or rule, is guilty of a felony. When a court sentences an SDP/PSPP patient for a violation of subdivision 3a(b), “the court shall provide that after the person has been released from prison, the commissioner shall place the person on conditional release for five years.” Minn. Stat. § 609.2231, subd. 3a(e). There is no such mandatory period of conditional release for MIDP patients convicted of violating subdivision 3a(c). *See id.*

In the present case, the district court correctly concluded that MIDP patients convicted under subdivision 3a(c) and SDP/PSPP patients convicted under subdivision 3a(b) are not similarly situated. This is true for at least four reasons.

First, MIDP patients committed pursuant to Minn. Stat. § 253B.18 and SDP/PSPP patients committed pursuant to Minn. Stat. § 253D.01–.36 are committed under separate, and differing, statutory structures. A person can be judicially committed as an MIDP patient if (1) an interested person applies to the appropriate county for conduct of a

preliminary investigation and then files a petition for commitment or (2) the proposed patient has been acquitted of a crime as a result of mental illness and the county attorney is therefore required to file a petition for commitment. Minn. Stat. § 253B.07. A person can only be judicially committed as an SDP/PSPP patient, on the other hand, if the county attorney for the relevant county files a petition for commitment. Minn. Stat. § 253D.07, subd. 1. While both chapters employ a judicial review hearing process and apply a clear and convincing standard of proof, Minn. Stat. §§ 253B.08–.09, 253D.07, the manner in which the commitment proceedings are commenced differs: proposed MIDP patients receive a pre-petition review, and interested individuals other than the relevant county attorney can petition for the commitment of proposed MIDP patients, neither of which is true of proposed SDP/PSPP patients.

Second, the two groups of individuals are committed for different reasons. In order for a person to be committed as an MIDP patient, the court must conclude by clear and convincing evidence that the person “has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, and is manifested by instances of grossly disturbed behavior or faulty perceptions,” and, “as a result of that impairment,” the proposed patient “presents a clear danger to the safety of others.” Minn. Stat. § 253B.02, subd. 17, .09, subd. 1. In order for a person to be committed as an SDP/PSPP patient, on the other hand, the court must conclude by clear and convincing evidence that 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, .07, subd. 3. The reasons for commitment thus differ, both in the characteristics that proposed patients must possess and the danger they must pose. And importantly, persons committed as SDP/PSPP patients must have engaged in a course of harmful sexual conduct before their commitment, while persons committed as MIDP patients need not have engaged in any prior, harmful conduct whatsoever.

Third, the individuals who qualify as potential victims differ under subdivisions 3a(b) and 3a(c). For an MIDP patient to be convicted under subdivision 3a(c), he must be found to have assaulted “an employee or other individual who supervises and works directly with patients at a secure treatment facility.” Minn. Stat. § 609.2231, subd. 3a(c). For an SDP/PSPP patient to be convicted under subdivision 3a(b), he must be found to have assaulted “an employee or other individual who provides care or treatment at a secure treatment facility.” Minn. Stat. § 609.2231, subd. 3a(b). There are thus individuals who could qualify as a victim under subdivision 3a(c) because they supervise and work directly with patients, but could not qualify as a victim under subdivision 3a(b) because they do not provide care or treatment. As an example, this category could potentially include security guards and transport personnel. There are also individuals who could qualify as a victim under subdivision 3a(b) because they provide care or treatment, but could not qualify as a victim under subdivision 3a(c) because they do not supervise and work directly with patients. As an example, this category could potentially include members of a treatment team who do not supervise and work directly with patients, such as a pharmacy technician.

Fourth, different conduct is criminalized by subdivisions 3a(b) and 3a(c). It is true, as appellant points out, that both subdivisions prohibit patients committed to secure treatment facilities from assaulting the person of, and inflicting demonstrable bodily harm upon, the persons who qualify as victims under each subdivision. Minn. Stat. § 609.2231, subs. 3a(b), (c). But under subdivision 3a(b), an SDP/PSPP patient is prohibited from “intentionally throw[ing] or otherwise transfer[ing] bodily fluids or feces *at or onto*” those persons who qualify as victims, while an MIDP patient is prohibited by subdivision 3a(c) only from “intentionally throw[ing] or otherwise transfer[ing] urine, blood, semen, or feces *onto*” those persons who qualify as victims. *Id.* (emphasis added).

There are at least two differences between these prohibitions. First, an MIDP patient could not be convicted under subdivision 3a(c) for merely throwing urine, blood, semen, or feces *at, but not onto*, a person qualifying as a victim, whereas an SDP/PSPP patient can be convicted under subdivision 3a(b) for throwing urine, blood, semen, or feces *at, but not onto*, a person qualifying as a victim. Second, because there are bodily fluids other than urine, blood, and semen—such as saliva, mucus, and breast milk—it follows that there are bodily fluids that an SDP/PSPP patient could be convicted of throwing at or transferring onto a victim that an MIDP patient could not be convicted of transferring onto a victim.

The only reason appellant could not have been convicted under subdivision 3a(c) is if he was committed as an SDP/PSPP patient and not an MIDP patient. Otherwise, the conduct appellant admitted to having engaged in—striking the victim and thereby causing demonstrable bodily harm—is prohibited under both subdivision 3a(b) and subdivision 3a(c), and the victim who appellant struck—a security counselor—would likely also

qualify as a victim under subdivision 3a(c), because the security counselor appears to have been “supervis[ing] and work[ing] directly with,” appellant at the time of the assault. Nonetheless, because appellant could not have been convicted under subdivision 3a(c) due to his commitment classification, and because MIDP patients convicted under subdivision 3a(c) do not appear, in general, to be similarly situated to SDP/PSPP patients convicted under subdivision 3a(b) for the reasons discussed above, appellant has failed to make the requisite preliminary showing that he is similarly situated to persons treated differently by Minn. Stat. § 609.2231, subd. 3a.

In sum, there are several important differences between subdivisions 3a(b) and 3a(c) including who may violate each part of the statute, who qualifies as a victim under each subdivision, and what conduct is prohibited by each subdivision. Accordingly, the district court correctly concluded that MIDP patients convicted under subdivision 3a(c) and SDP/PSPP patients convicted under subdivision 3a(b) are not similarly situated.

**II. The matter need not be remanded with instructions to determine whether the disparate treatment of individuals convicted under subdivisions 3a(b) and 3a(c) is rationally related to a legitimate governmental interest.**

Because we conclude that appellant has failed to make the threshold showing that MIDP patients convicted under subdivision 3a(c), are similarly situated to SDP/PSPP patients convicted under subdivision 3a(b), we affirm the district court’s denial of appellant’s petition for postconviction relief. We do so without considering, or remanding with instructions for the postconviction court to consider, whether the disparate treatment of these two groups is rationally related to a legitimate governmental interest.

**Affirmed.**