STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1623

In the Matter of the Civil Commitment of: Jacquet Deon Munn.

Filed September 12, 2022
Affirmed
Bryan, Judge

Hennepin County District Court
File No. 27-MH-PR-20-1074

Jacquet Deon Munn, Moose Lake, Minnesota (pro se appellant)

Michael O. Freeman, Hennepin County Attorney, Annsara Lovejoy Elasky, Assistant County Attorney, Minneapolis, Minnesota (for respondent county)

Considered and decided by Gaïtas, Presiding Judge; Cochran, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

Appellant raises the following three challenges to the district court's decision to commit him as a sexually dangerous person: (1) the district court made unsupported factual findings that appellant engaged in a course of harmful sexual conduct; (2) the district court erred when it determined that appellant was highly likely to reoffend; and (3) appellant's counsel provided ineffective assistance. We affirm the district court.

FACTS

On January 14, 2021, Hennepin County petitioned to civilly commit appellant Jacquet Deon Munn as a sexually dangerous person (SDP) and as a person with sexual psychopathic personality (SPP). The district court appointed two examiners to conduct forensic psychological examinations: Dr. Michael Thompson and Dr. James Alsdurf. Thompson opined that Munn met the definition of an SDP, but not an SPP. Alsdurf, who was appointed at Munn's request, opined that Munn met the definition for both an SDP and an SPP. Both experts discussed Munn's extensive criminal history, his chemical dependency, and sexual assault history.

The district court held an evidentiary hearing over three days in September 2021. On the first day of the commitment hearing, Munn's attorney moved for a continuance because he only had a few days to review the contents of the file for Munn's 1994 criminal sexual assault convictions from the Hennepin County Public Defender's office. Munn's counsel explained that the public defender's office initially and mistakenly reported that the 1994 file no longer existed. Munn's attorney also described the efforts he made since receiving the file to prepare for the evidentiary hearing. The district court denied the continuance request but added a third day to the evidentiary hearing schedule to occur the following week in order to allow sufficient time for his counsel to prepare. Munn's counsel also moved to exclude Alsdurf's report because it contained four mentions of "Mr. Miller." Based on Alsdurf's testimony, the district court found that "it was merely a clerical error to insert Miller rather than Munn" and denied Munn's motion. During the evidentiary

hearing, the district court received several exhibits and heard testimony from the two experts and three of Munn's witnesses.

The evidence established that Munn has a lengthy criminal history with adjudications of juvenile delinquency for several offenses (including theft, curfew, trespass, multiple property damage charges, fifth-degree assault, possession of a firearm, automobile theft, first-degree attempted murder, and second-degree assault) as well as a variety of criminal convictions in adult court (including convictions for theft, driving under the influence, check forgery, domestic assault, fourth-degree assault, fifth-degree assault, felony terroristic threats, third-degree assault, and failure to register as a predatory offender). Of particular importance are Munn's prior convictions for third-degree criminal sexual conduct in 1994 and 2011.[1]

On July 22, 1994, Munn was charged with two counts of criminal sexual conduct in the first degree, two counts of criminal sexual conduct in the third degree, one count of criminal sexual conduct in the second degree, one count of attempted criminal sexual conduct in the first degree, and one count of solicitation for offenses that occurred on July 19, 1994, when Munn was 22 years old. The two victims, K.L. and M.M., were both minors and they each gave statements to the police. K.L. initially denied being sexually assaulted, but stated that Munn and an accomplice both raped M.M. During a subsequent interview, K.L. told police that at one point Munn asked if she wanted to have sex with him and she said no. He then poured beer on her and refused to let her or M.M. leave the residence they

[1] Munn was also investigated in 1994 for a sex offense involving a fourteen-year-old female, but no charges were brought.

were in. K.L. told police that Munn brought her into a separate room where he forced her to engage in vaginal and anal intercourse. During this assault, K.L. stated that Munn's accomplice sexually assaulted M.M. K.L. also stated that Munn slapped her face and buttocks and put his mouth on her breasts during the assault. K.L. was afraid that if she resisted, she would have been killed.

K.L. reported that after assaulting her, Munn went to the room where M.M. and the accomplice were, and K.L. saw Munn have anal intercourse with M.M. In addition, M.M. provided a statement to the police in which she explained Munn tried to have anal intercourse with her but was not successful. Both juveniles also said that Munn tried to solicit them to work for his phone escort service.

Munn pleaded guilty to an amended charge of third-degree criminal sexual conduct and attempted third-degree criminal sexual conduct under Minnesota Statutes, section 609.344, subdivision 1(b) (1993). In his presentence investigation, Munn admitted to having sex with K.L and approaching M.M., but he denied trying to have sex with M.M. Munn also admitted that he asked the victims if they wanted to work for his escort service. In a sex offender intake report from the Department of Corrections, Munn again admitted to having sexual intercourse with K.L., but denied anal intercourse or the use of force or coercion. Munn also stated that he believed the victims were eighteen years old and denied that he solicited them to work as prostitutes.

On January 26, 2011, Munn was charged with two counts of criminal sexual conduct in the first degree, one count of criminal sexual conduct in the third degree, one count of a prohibited person in possession of a firearm, and one count of assault in the second degree

for conduct occurring on April 10, 2010. Munn pleaded guilty to one count of criminal sexual conduct in the third degree and to possession of a firearm by a prohibited person. The evidence presented to the district court at the commitment hearing regarding this conduct showed that Munn punched his cousin's fiancée in the face multiple times, pointed a handgun to her head, and ordered her to swallow pills. Munn then vaginally penetrated the woman without a condom, knowing he was HIV positive. Munn also attempted force his penis into the victim's mouth and into her anus.

In November 2020, before his release from prison for the 2011 conviction, the Department of Corrections conducted a risk assessment. Based on that assessment, the Department of Corrections recommended civil commitment as an SDP and SPP and noted that Munn had never engaged in formal sex offender treatment. On April 21, 2021, Munn was released from prison and ordered to the custody of the Minnesota Sex Offender program for the commitment proceedings.

Following the trial, the parties submitted written closing arguments and proposed findings of fact and conclusions of law. On October 28, 2021, the district court issued an order committing Munn as an SDP to the Minnesota Sex Offender Program. The district court's order addressed the following: Munn's juvenile delinquency proceedings; his adult criminal proceedings; his history of assaultive behavior while he was incarcerated; his mental health, psychological, chemical dependency, and sex offender evaluations; the Department of Corrections assessment and review; Munn's versions of the sexual assault offenses; Munn's testimony from the hearing and his witnesses' testimony; and the examiners' testimony and reports. The district court determined that Thompson and

Alsdurf were credible experts and expressly noted which of their opinions were persuasive and supported by the record. The district court held that there was clear and convincing evidence that Munn engaged in a course of harmful sexual conduct because his three criminal sexual conduct convictions qualified under the rebuttable presumption of Minnesota Statutes section 253D.02, subdivision 8(b) (2020). The district court noted that "[e]ven without reliance on the presumption, there is clear and convincing evidence that [Munn]'s conduct created a substantial likelihood of serious physical or emotional harm to his victims." The district court found that even though Munn pleaded guilty to statutory rape in 1994, it does "not change that the young victims will have ongoing emotional harm from the incident, as testified to by Drs. Alsdurf and Thompson."

The district court also concluded that Munn suffers from sexual and personality disorders that constitute mental disorders required by the SDP statute. The district court determined that Munn is a person highly likely to engage in acts of harmful sexual conduct. The determination was supported by the various actuarial risk assessments performed by the examiners, other evaluations and Munn's criminal history, and an analysis of the six factors for determining a person's likelihood of reoffending, as set forth in *In re Linehan*, 518 N.W.2d 609 (Minn. 1994), which all weighed in favor of finding that Munn is highly likely to reoffend. Although the district court ultimately ordered Munn's commitment as an SDP, it denied the county's petition to commit Munn as an SPP. Munn appeals.

DECISION

Munn challenges the district court's decision to commit him as an SDP on three primary grounds: (1) he argues that the district court clearly erred in making factual

findings regarding whether the 1994 offenses caused substantial harm to the victims; (2) he asserts that the district court erred legally and factually when it determined that he was highly likely to reoffend; and (3) he contends that his counsel provided ineffective assistance. We address each argument in turn.[2]

I. Factual Findings Regarding a Course of Harmful Sexual Conduct

Munn first challenges factual findings of the district court, contending that his prior conduct was not "harmful."[3] Because Munn's argument misstates the law and because the evidentiary record supports the findings, we affirm the district court's factual findings.

To commit a person as a sexually dangerous person, the state must prove by clear and convincing evidence that the person:

> 1) has engaged in a course of harmful sexual conduct as defined in subdivision 8;
> 2) has manifested a sexual, personality, or other mental disorder or dysfunction; and

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[2] Munn's reply brief raised two new issues: a challenge to the district court's finding that he has a "sexual, personality, or other mental disorder or dysfunction;" and an allegation of prosecutorial misconduct. Neither argument is properly before this court, and we decline to address them. Minn. R. Civ. App. P. 128.02, subd. 3 (providing that an appellant's "reply brief must be confined to new matter raised in the brief of the respondent"); *see also State v. Yang*, 774 N.W.2d 539, 558 (Minn. 2009) (declining to address claim raised for the first time in a reply brief).

[3] Portions of Munn's brief could be construed as arguing that his conduct is not a "course" of conduct because of the gap in time between his 1994 and 2010. However, we have previously determined that the term "course" includes conduct spanning decades. *See In re Civil Commitment of Crosby*, 824 N.W.2d 351, 360 (Minn. App. 2013) (concluding that despite appellant having two "offense-free decades" his offenses were in succession and therefore, a course of conduct), *rev. denied* (Minn. Mar. 27, 2013); *see also In re Civil Commitment of Ramey*, 648 N.W.2d 260, 268 (Minn. App. 2002) (defining the term "course" as "a systematic or orderly succession; a sequence). We decline to overrule or revisit the holdings in *Ramey* and *Crosby* and conclude that the district court did not err when it considered Munn's 1994 and 2010 offenses.

> 3) as a result, is likely to engage in acts of harmful sexual conduct as defined in subdivision 8.

Minn. Stat. § 253D.02, subd. 16(a) (2020). Subdivision 8 defines "harmful sexual conduct" as "sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another." *Id.*, subd. 8(a) (2000). "There is a rebuttable presumption that conduct described in" section "609.334 (criminal sexual conduct in the third degree)" "creates a substantial likelihood that a victim will suffer serious physical or emotional harm." *Id.* subd. 8(b) (2000).

"On appeal, this court applies a clear-error standard of review to the district court's findings of fact and reviews the record in the light most favorable to the findings of fact." *In re Civil Commitment of Spicer*, 853 N.W.2d 803, 807 (Minn. App. 2014). This court "reviews de novo questions of statutory construction and the application of statutory criteria to the facts found." *In re Civil Commitment of Kropp*, 895 N.W.2d 647, 650 (Minn. App. 2017) (citations omitted), *rev. denied* (Minn. June 20, 2017). We defer to the credibility determinations of the district court, *In re Conservatorship of Lundgaard*, 453 N.W.2d 58, 60-61 (Minn. App. 1990), and will not conclude that the district court erred "unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed." *In re Civil Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotations and citations omitted). In addition, this court does not reconcile conflicting evidence or reweigh the "evidence as if trying the matter de novo." *Id.* at 221 (quotation omitted). "When the record reasonably supports the findings at issue on appeal,

it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Id*. at 223 (quotation omitted).

Munn argues that there is insufficient proof that he engaged in harmful sexual conduct because the evidence relating to the 1994 offenses shows the victims did not actually suffer harm and because he did not use force or anally penetrate the victims. We are not convinced for two reasons.

First, Munn's argument is based on an incorrect statement of the law. Contrary to his argument, to satisfy the statutory meaning of "harmful sexual conduct," the county need not prove that the victims suffered actual harm, only that the sexual conduct in question caused a "substantial likelihood of serious physical or emotional harm." Minn. Stat. § 253D.02, subd. 8(a); *see also In re Civil Commitment of Martin*, 661 N.W.2d 632, 639 (Minn. App. 2003) (concluding that the "presumption is not that a victim actually suffers serious emotional harm as a result of a defendant's conduct; it is that the conduct creates a substantial likelihood of serious emotional harm"), *rev denied* (Minn. Aug. 5, 2003); *Ramey*, 648 N.W.2d at 269 ("The standard is not that it must create physical or emotional harm; rather there must be a substantial likelihood of harm").[4] Moreover, the third-degree

[4] The county cites three nonprecedential cases to convince us that Munn misstates the law when he argues that the 1994 offenses need to involve force, coercion, or anal penetration: *In re Brinkman*, No. A08-1077, 2008 WL 5058637 (Minn. App. Dec. 2, 2008); *In re Commitment of Swedeen*, No. A07-805, 2007 WL 2770440 (Minn. App. Sept. 25, 2007); *In re Creighton*, No. C9-97-748, 1997 WL 407802 (Minn. App. July 22, 1997). We acknowledge their persuasive value and find the analysis in *Brinkman* convincing: "Contrary to appellant's argument, consent is not a defense to third-degree criminal sexual conduct involving a minor . . . . Willingness on the part of a minor fails to rebut the presumption that third-degree criminal sexual conduct involving a minor is harmful sexual conduct; thus, appellant's argument fails." 2008 WL 5058637, at *8.

criminal sexual conduct statute prohibits a variety of conduct, including acts that do not involve violence or coercion, such as consensual sexual penetration of a minor. Minn. Stat. § 609.344, subd. 1a(b) (2020) (setting forth elements of statutory rape and expressly providing that consent is not a defense and mistake of age is not a defense when the actor is "more than 60 months older than the [victim]"). Contrary to Munn's argument, the state need not establish that he used force or coercion or that he had nonconsensual intercourse with the victims in 1994 to establish the statutory presumption that these offenses created a substantial likelihood of serious physical or emotional harm.

Second, we conclude that the district court did not clearly err when it made findings regarding Munn's conduct in 1994 and the likelihood of harm that the conduct created. Munn points out that K.L. and M.M. gave inconsistent statements and emphasizes evidence that the district court did not credit. Given our standard of review, however, we must defer to the district court's determination of witness credibility, *In re Lungaard*, 453 N.W.2d at 60-61, and do not reweigh conflicting evidence, *In re Kenney*, 963 N.W.2d at 217, 221. The record includes police reports, victim statements, psychological evaluations and other evidence that support the district court's findings. For example, the district court accurately summarized statements from K.L. and M.M. that Munn had vaginal and anal intercourse with K.L. without her consent and that Munn attempted to have anal intercourse with M.M. In addition, the district court found credible the examiners' testimony and reports regarding the harm that K.L. and M.M. would have suffered. Given this record, it was not clearly erroneous for the district court to conclude that Munn's conduct created a substantial likelihood of serious physical or emotional harm for both victims.

II. Determination that Munn is Highly Likely to Reoffend

Munn also disputes the determination that he is highly likely to reoffend, making both legal and factual arguments. First, Munn argues that, as a legal matter, this court should revise or discontinue using the six *Linehan* factors because they are outdated and redundant. Second, Munn challenges the findings of fact as insufficiently particularized. Finally, Munn challenges three specific findings as clearly erroneous. None of these arguments has merit.

To determine whether a person is highly likely to reoffend, a district court must conduct a "multi-factor analysis." *In re Civil Commitment of Ince*, 847 N.W.2d 13, 20-22 (Minn. 2014). The multi-factor analysis includes consideration of six factors, commonly known as the *Linehan* factors:

> (a) the person's relevant demographic characteristics (e.g., age, education, etc.); (b) the person's history of violent behavior (paying particular attention to recency, severity, and frequency of violent acts); (c) 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.); (d) 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); (e) the similarity of the present or future context to those contexts in which the person has used violence in the past; and (f) the person's record with respect to sex therapy programs.

Id. at 22 (quoting *Linehan*, 518 N.W.2d at 614). The multi-factor analysis may also include other relevant evidence and information, including actuarial-assessment evidence. *Id.* at 23-24. No single factor is determinative. *In re Civil Commitment of Navratil*, 799 N.W.2d 643, 649 (Minn. App. 2011), *rev. denied* (Minn. Aug. 24, 2011). Rather, "[t]he district

court is free to determine the weight to be attributed to any particular piece of evidence, including predictions of future short- or long-term recidivism rates, based on the record in an individual case." *Ince*, 847 N.W.2d at 24.

Although Munn acknowledges in his brief that the first, fourth, fifth, and sixth *Linehan* factors support the district court's determination that he is highly likely to reoffend, he argues that this court should discontinue the *Linehan* factors because those factors are outdated and overlap with the risk assessment tools used, resulting in double counting. The Minnesota Supreme Court, however, has considered this legal argument and declined to revise or abrogate *Linehan*, *see Ince*, 847 N.W.2d at 22-24, and this court is bound to follow that precedent, *e.g.*, *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018).

Munn also argues that the district court clearly erred in the factual findings underlying its *Linehan* analysis, contending that they are not sufficiently particularized. We disagree with this characterization of the district court's decision. Contrary to Munn's assertion, the factual findings are detailed, specific, and thorough, comprising 57 pages and 185 paragraphs. These findings properly reflect the district court's consideration of the relevant evidence, identify which facts the district court determined to be true, and convey the district court's assessment of their significance. Further, the district court's analysis explains the significance of these facts to each of the *Linehan* factors, tying the factual findings to the district court's conclusions of law. In short, we discern no error in the particularity of the district court's findings.

Munn also argues that the following three findings are clearly erroneous: (1) the district court's summary of statements made by the victim of the 2005 felony assault in

finding of fact paragraph 32; (2) the district court's summary of the conclusions of Alsdurf and Thompson[5] in conclusion of law paragraph 5;[6] and (3) the reference to "forced vaginal and anal penetration" in the summary of Munn's prior criminal sexual conduct offenses in conclusion of law paragraph 7. We address each in turn and conclude that the district court did not clearly err.

Our review of the exhibit relied on in finding of fact paragraph 32 shows that the district court accurately summarized the statements made regarding Munn's conduct. Although Munn directs our attention to conflicting statements, this court does not reweigh conflicting evidence. *In re Kenney*, 963 N.W.2d at 217, 221. In addition, the record contains sufficient evidence to support the factual statement in conclusion of law paragraph 5. "[V]arious actuarial risk assessments" in the record show that Munn is highly likely to reoffend. Specifically, as noted by the district court in finding of fact paragraphs 163-167, the record contains evidence that Alsdurf and Thompson administered multiple risk assessments, which indicated that Munn had a high or higher than average risk of recidivism. Finally, as noted above, the record contains evidence that the 1994 offenses involved nonconsensual vaginal and anal penetration, and the district court did not clearly err in referring to this conduct in conclusion of law paragraph 7.

[5] Portions of Munn's brief criticize the examiners' testimony and reports, but without more, we cannot construe these comments as an assertion of error in admitting this evidence.

[6] Munn inadvertently refers to the disputed factual statements as "FOF 5" and "FOF 7," but he refers to statements in the district court's conclusions of law, paragraphs 5 and 7.

III. Ineffective Assistance of Counsel Claim

Munn claims that he received ineffective assistance because his counsel was inexperienced and because his counsel did not effectively cross-examine Alsdurf, successfully request exclusion of Alsdurf's report, or sufficiently review discovery. We conclude that counsel's conduct did not fall below an objective standard of reasonableness.

A district court "shall appoint a qualified attorney to represent the proposed patient if neither the proposed patient nor others provide counsel." Minn. Stat. § 253B.07, subd. 2(c) (2020). A person who is indeterminately committed as an SDP or an SPP may bring an ineffective assistance of counsel claim. *In re Civil Commitment of Johnson*, 931 N.W.2d 649, 657 (Minn. App. 2019), *rev. denied* (Minn. Sept. 17, 2019).

This court analyzes ineffective assistance of counsel claims under the *Strickland* standard that applies in criminal cases. *In re Alleged Mental Illness of Cordie*, 372 N.W.2d 24, 28-29 (Minn. App. 1985), *rev. denied* (Minn. Sept. 26, 1985). To prevail, an appellant "must show that counsel's representation fell below an objective standard of reasonableness" and that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984); *see also State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003) (applying *Strickland* to claim of ineffective assistance of counsel). "To be entitled an evidentiary hearing . . . an appellant must allege facts, that if proven by a fair preponderance of the evidence, would satisfy the two-prong test set forth in *Strickland*." *Chavez-Nelson v. State*, 948 N.W.2d 665, 671 (Minn. 2020) (quotations and citations omitted).

An attorney's performance is substandard when the attorney does not exercise "the customary skills and diligence that a reasonably competent attorney would [exercise] under the circumstances." *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999) (quotations and citations omitted). Matters of trial strategy lie within the discretion of the trial counsel and will not be second-guessed by appellate courts. *Id*. This court applies "a strong presumption that [an attorney's] performance falls within the wide range of reasonable professional assistance. General assertions of error without evidentiary support are inadequate . . . [and] a reviewing court generally will not review attacks on counsel's trial strategy." *Johnson*, 931 N.W.2d at 657 (quotations and citations omitted). We apply a de novo standard of review to claims of ineffective assistance of counsel. *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017) (citation omitted).

In this case, Munn does not establish that his counsel's conduct fell below a reasonable standard of care. Munn does not specifically discuss his counsel's conduct or performance. Instead, Munn expresses general concern about his counsel's inexperience, dissatisfaction with the amount of time that his counsel had to review pretrial discovery, disappointment that the district court ultimately denied the motion in limine that his counsel made, and disagreement with the credibility findings that the district court made. Munn does not explain, much less establish, how his counsel's conduct differed from that of constitutionally effective counsel.

We also observe that some of Munn's specific arguments misconstrue the record on appeal and relate to conduct that we have repeatedly determined to be matters of strategy and unrelated to ineffective assistance. For example, contrary to Munn's argument, the

record shows that his counsel did cross-examine the experts regarding the limitations of the risk assessment tools that they used. In addition, trial counsel's cross-examination of witnesses is considered trial strategy. *See Francis v. State*, 781 N.W.2d 892, 898 (Minn. 2010) (declining to consider whether to cross-examine the state's expert witnesses constitutes erroneous conduct because it relates to trial strategy).

For these reasons, we conclude that Munn has failed to assert facts, that if proven by a fair preponderance of the evidence, would show his counsel's conduct was objectively unreasonable. Thus, he has failed to establish the first *Strickland* prong and is not entitled to a hearing. *See Chavez-Nelson*, 948 N.W.2d at 671.

Affirmed.