This opinion is nonprecedential except as provided by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
A22-0261

In the Matter of the Civil Commitment of: Eric Matthew Flanders.

Filed July 18, 2022
Affirmed
Larkin, Judge

Commitment Appeal Panel
File No. AP20-9139

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Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the dismissal of his petition for provisional discharge from his commitment as a sexually dangerous person. We affirm.

FACTS

Appellant Eric Matthew Flanders is cognitively disabled and has a history of sexual misconduct that includes exposing himself to others. In 1992, at the age of 14, Flanders

was charged with several counts of criminal sexual conduct for sexually abusing a seven-year-old girl. The charges were ultimately dismissed.

In 2001, at the age of 23, Flanders repeatedly sexually abused a developmentally disabled adult female, who was a resident at a group home where he resided. The abuse included forced vaginal penetration. Flanders pleaded guilty to one count of fourth-degree criminal sexual conduct and received a 21-month stayed sentence for that conduct. Flanders continued to engage in aggressive and inappropriate conduct, including exposing himself to a dental assistant and attacking a treatment staff member, and he was ultimately dismissed from his treatment programs. In 2004, the district court revoked Flanders's stayed sentence and sent him to prison.

In October 2005, the district court indeterminately committed Flanders as a sexually dangerous person. Flanders currently resides at the Minnesota Sex Offender Program (MSOP) facility in St. Peter. He is in the first phase of a three-phase treatment program, specifically, an alternative program designed for individuals with compromised executive functioning.

In 2019, Flanders petitioned for a transfer, provisional discharge, or discharge. The special review board (SRB) recommended denying Flanders's petition. The SRB opined that Flanders's "current treatment setting is not the appropriate place for him" and that "[h]e cannot successfully function in the MSOP treatment model, [because] he needs individualized, one-on-one treatment." But the SRB concluded that Flanders "simply d[id] not meet the statutory criteria" for a custody reduction. Flanders sought rehearing and

reconsideration, and the matter was scheduled for a hearing before the commitment appeal panel (CAP). CAP appointed an independent examiner, who issued a report.

In September 2021, CAP held a hearing on Flanders's request for a custody reduction. CAP received numerous exhibits, including the independent examiner's report, and it heard testimony from MSOP's reintegration director, Flanders's legal guardian (his mother), and the independent examiner. Flanders withdrew his requests for a transfer or full discharge, leaving only his request for a provisional discharge.

The reintegration director testified that he oversees the supervision of MSOP patients who are placed in the community on provisional-discharge status. He discussed the standard provisional discharge conditions that would apply if Flanders were released. He testified that patients do not receive a finalized discharge plan until after a provisional discharge is granted. The reintegration director testified that he had experience placing individuals with intellectual disabilities into the community and knew of several "licensed adult foster care homes," most with "a one staff to client ratio."

The independent examiner testified that Flanders had the "functionality of a six-year-old" and had not "progressed" or "improved in any appreciable way" after approximately 16 years at MSOP. The examiner testified that Flanders was incapable of operating in a group-treatment environment, that MSOP's secure facility was not an appropriate treatment setting because Flanders was "not intellectually, emotionally, or behaviorally able to engage in treatment programming," and that Flanders was better suited to treatment in a controlled residential setting. The examiner believed that the monitoring and security provided in a residential setting would be sufficient to protect the public. The

examiner concluded that the case presented a difficult situation because Flanders did not "look good from a treatment perspective" and did not "look safe from an actuarial perspective," but he was receiving no benefit from MSOP. The examiner believed that Flanders would never be able to successfully engage in sex-offender treatment because of his intellectual disability, even in a residential setting.

At the close of the hearing, the commissioner of human services (commissioner) moved to dismiss Flanders's petition under Minn. R. Civ. P. 41.02(b). CAP determined that Flanders was not entitled to a provisional discharge and granted the commissioner's motion. CAP concluded that Flanders failed to present "competent evidence" showing that he is no longer in need of treatment and supervision in his current setting and that he failed to show that his provisional discharge plan would provide sufficient protection to the public and enable him to successfully adjust to the community. CAP acknowledged that Flanders also sought relief on constitutional grounds. It determined that Flanders's continued commitment was not unconstitutional because he remained "an untreated sex offender with unmet treatment needs."

Flanders appeals.

DECISION

Flanders challenges CAP's denial and dismissal of his petition for provisional discharge. An individual committed as a sexually dangerous person may petition for a provisional discharge from commitment. Minn. Stat. § 253D.27, subds. 1(b), 2 (2020). If the SRB recommends denying the petition, the committed person may seek reconsideration from CAP. Minn. Stat. § 253D.28, subd. 1 (2020); *Larson v. Jesson*, 847 N.W.2d 531, 534

(Minn. App. 2014). In a first-phase hearing before CAP, the petitioner bears the burden of "presenting a prima facie case with competent evidence" to show that he is entitled to a provisional discharge. Minn. Stat. § 253D.28, subd. 2(d) (2020); *Larson*, 847 N.W.2d at 535. If the petitioner satisfies that burden, CAP then holds a second-phase hearing at which the party opposing the petition must prove that a provisional discharge should be denied. *See* Minn. Stat. § 253D.28, subd. 2(d).

After the first-phase hearing, the party opposing the petition may move to dismiss the petition under Minn. R. Civ. P. 41.02(b) on the grounds that the petitioner failed to make a prima facie case. *Larson*, 847 N.W.2d at 535. When considering such a motion, CAP may not weigh evidence or make credibility determinations and must view the evidence in the light most favorable to the petitioner. *Id.* When CAP dismisses a civil-commitment petition for provisional discharge under Minn. R. Civ. P. 41.02(b), this court applies a de novo standard of review. *Id.* at 532-33.

I.

A person civilly committed as a sexually dangerous person "shall not be provisionally discharged unless [he] is capable of making an acceptable adjustment to open society." Minn. Stat. § 253D.30, subd. 1(a) (2020). CAP must consider two factors in determining whether to grant a provisional discharge:

> (1) whether the committed person's course of treatment and present mental status indicate there is no longer a need for treatment and supervision in the committed person's current treatment setting; and
>
> (2) whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the

> public and will enable the committed person to adjust successfully to the community.

Id., subd. 1(b) (2020).

As to the first factor, Flanders failed to present evidence showing that he no longer needs treatment and supervision in his current setting. The examiner testified that Flanders did not "look good from a treatment perspective," did not "look safe from an actuarial perspective," and had not meaningfully progressed in treatment. The examiner's report noted Flanders's failure to attend treatment activities, disengagement from treatment programming, emotional dysregulation, and "poor insight and judgment regarding the circumstances of his commitment and current status at the MSOP." The examiner assessed that Flanders was at the "precontemplation stage," or "the stage of least progress toward change," which is a stage defined by "little to no insight, little to no willingness to change, rigid and unchanging beliefs, and lack of awareness that there is any problem with behaviors or actions." The examiner opined that the "safety of the community," and Flanders's own safety, would be at risk if he were "unsupervised, unsupported, and residing in an environment without security protocols."

The evidence concerning Flanders's course of treatment and present mental status indicates that he continues to need treatment and supervision in his current setting and is not capable of transitioning to open society. We acknowledge that the examiner concluded that Flanders's current setting is not appropriate because he is not benefitting from treatment. But this conclusion concerns the adequacy of Flanders's treatment and strays from the relevant inquiry under the first factor. Moreover, the examiner testified that

Flanders had recently received a roommate, was "tolerating it and working with the roommate," had recently engaged in a few sessions of one-on-one therapy, and was showing "some improvement."

"To satisfy the burden of production, the petitioner must come forward with sufficient, competent evidence that, if proven, would entitle the petitioner to relief." *Larson*, 847 N.W.2d at 535 (quotation omitted). Flanders failed to present evidence that his course of treatment and present mental status indicate that he no longer needs treatment and supervision in his current setting.

As to the second factor, Flanders presented the SRB with a standard provisional discharge plan that set forth 37 broad conditions, such as complying with any MSOP rules or supervision policy, submitting to GPS monitoring, residing at an approved residence, and refraining from contacting "minors, known victims, or vulnerable adults unless approved in advance." Those broad conditions are likely sufficient to show that a provisional discharge would provide "a reasonable degree of protection to the public." Minn. Stat. § 253D.30, subd. 1(b)(2). But Flanders did not present evidence showing that a provisional discharge will enable him "to adjust successfully to the community." *Id.* Indeed, we fail to see how he could do so given that he did not present sufficient evidence showing that he no longer needs treatment and supervision in his current treatment setting.

In sum, although we are sympathetic to Flanders's situation, we conclude that he failed to make a prima facie case for provisional discharge.

II.

Flanders next argues that he presented a prima facie case for provisional discharge "under constitutional standards." He asserts that he "no longer has a mental illness which is the basis for his detention" and that continued detention "is not rationally related to why he was originally committed."

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides, "No state shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1; *see also* Minn. Const. art. I, § 7. The Due Process Clause confers rights on persons who are civilly committed because civil commitment "constitutes a significant deprivation of liberty." *Addington v. Texas*, 441 U.S. 418, 425 (1979). "A state may deprive a person who is mentally ill and dangerous of his or her liberty by confinement to a mental institution without violating due process until such time as that person is no longer mentally ill or is no longer a danger to himself." *Lidberg v. Steffen*, 514 N.W.2d 779, 783 (Minn. 1994). "[T]here is . . . no constitutional basis for confining [mentally ill persons] involuntarily if they are dangerous to no one and can live safely in freedom." *O'Connor v. Donaldson*, 422 U.S. 563, 575 (1975).

"Due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." *Lidberg*, 514 N.W.2d at 783 (quotation omitted). "The reasonable-relationship requirement is satisfied if a committed person 'is confined for only so long as he or she continues both to need further inpatient treatment and supervision for his . . . disorder and to pose a danger to the

public.'" *In re Civil Commitment of Opiacha*, 943 N.W.2d 220, 226-27 (Minn. App. 2020) (alteration in original) (quoting *Call v. Gomez*, 535 N.W.2d 312, 319 (Minn. 1995)).

We note that the cases cited by Flanders in support of his constitutional argument primarily concern mentally ill and dangerous patients seeking discharge or release from commitment, and not sexually dangerous persons seeking provisional discharge. *See*, *e.g.*, *Addington*, 441 U.S. at 421 (involving challenge to commitment as mentally ill and dangerous); *Lidberg*, 514 N.W.2d at 780 (involving mentally ill and dangerous patient's request for discharge); *Call*, 535 N.W.2d at 314 (involving challenge to discharge of patient committed as psychopathic personality); *Opiacha*, 943 N.W.2d at 222 (involving mentally ill and dangerous patient's request for discharge). Even if the reasoning espoused in those cases applies to a sexually dangerous person's request for provisional discharge, Flanders has failed to present a prima facie case for relief.

A sexually dangerous person is defined as one who has "engaged in a course of harmful sexual conduct," "manifested a sexual, personality, or other mental disorder or dysfunction," and "as a result, is likely to engage in acts of harmful sexual conduct." Minn. Stat. § 253D.02, subd. 16(a) (2020).[1] Flanders seems to suggest that his past sexual misconduct and present danger to society result only from his intellectual disability. He asserts that he "no longer has a mental illness that compels him or causes him to be of the

[1] We note that Flanders was committed as a sexually dangerous person under Minn. Stat. § 253B.02, subd. 18c (2004), which is essentially identical in language to section 253D.02, subdivision 16.

class of persons committed to MSOP due to sexual disorders or compulsions." For the reasons that follows, we are not persuaded.

The independent examiner's report notes that Flanders suffers from exhibitionistic disorder, a paraphilic disorder, antisocial personality disorder, posttraumatic stress disorder, as well as other disorders. Flanders argues that the independent examiner's "only diagnoses" were that he "is intellectually disabled and suffered from PTSD." Flanders recognizes that the examiner's report "lists a variety of other diagnoses," but Flanders argues that the examiner "did not corroborate those by his testimony or in the body of his report as being presently existent." Although the examiner was not questioned about Flanders's present diagnoses, the examiner's report listed the above diagnoses. Moreover, Flanders's individual treatment plan listed several diagnoses, including exhibitionistic disorder and other specified paraphilic disorder. This record does not support a conclusion that Flanders is no longer a sexually dangerous person.

The record also does not support a conclusion that the nature and duration of Flanders's commitment no longer bears a reasonable relation to the purpose of his commitment. Again, Flanders did not present evidence showing that he no longer needs treatment and supervision in his current sex-offender treatment setting.

In sum, Flanders failed to present a prima facie case for provisional discharge on due-process grounds.

III.

Lastly, we address the adequacy of Flanders's treatment. Much of the evidence presented to CAP concerned the adequacy of Flanders's treatment at MSOP. For example,

the examiner testified that Flanders is incapable of operating successfully in a group-treatment environment and that his current setting is inappropriate "for the simplest reason that he's unable to engage in the treatment modalities that are offered." The SRB reached a similar conclusion.

"A committed individual has a statutory and constitutional right to treatment." *In re Civil Commitment of Navratil*, 799 N.W.2d 643, 650 (Minn. App. 2011), *rev. denied* (Minn. Aug. 24, 2011). But a custody-reduction petition is not the proper method of attacking the adequacy of treatment. Minnesota's commitment act "does not provide any procedures for a patient indeterminately committed . . . to raise nontransfer, nondischarge claims." *In re Civil Commitment of Lonergan*, 811 N.W.2d 635, 642 (Minn. 2012); *see also In re Civil Commitment of Saengchanh*, No. A18-1811, 2019 WL 1233562, at *4 (Minn. App. Mar. 18, 2019) (stating that Minnesota's commitment and treatment act does not "authorize a discharge or transfer as a means of obtaining alternative treatment when the statutory standards for a discharge or transfer are not otherwise satisfied").

CAP observed that it "has limited jurisdiction and can only grant relief based upon specific criteria" and that it "cannot direct or evaluate the effectiveness of treatment." However, CAP "strongly encourage[d] MSOP to re-evaluate [Flanders's] needs and make all necessary accommodations for him." We do the same. We also observe that although the underlying process is not an avenue to obtain relief based on inadequate treatment, there are other ways for a patient to challenge the adequacy of treatment. *See In re Civil Commitment of Moen*, 837 N.W.2d 40, 47-48 (Minn. App. 2013) (discussing the availability of a habeas corpus or federal civil rights claim to challenge inadequate

treatment), *rev. denied* (Minn. Oct. 15, 2013); *In re Civil Commitment of Travis*, 767 N.W.2d 52, 58-59 (Minn. App. 2009) (discussing available legal avenues).

Affirmed.