STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2006

In the Matter of the Civil Commitment of: Ming Sen Shiue.

Filed April 26, 2011
Affirmed
Worke, Judge

Anoka County District Court
File Nos. 02-PR-09-545, 02-PR-07-234

Rick E. Mattox, Prior Lake, Minnesota (for appellant Ming Sen Shiue)

Anthony C. Palumbo, Anoka County Attorney, Janice M. Allen, Assistant County Attorney, Anoka, Minnesota (for respondent Anoka County)

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and Stauber, Judge.

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

WORKE, Judge

Appellant challenges the district court's initial civil-commitment order, arguing that (1) there is insufficient evidence to show that he is a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP); (2) he demonstrated the availability of a less-restrictive alternative; and (3) the denial of his federal parole deprived him of sex-offender treatment and, consequently, violated his due-process rights. We affirm.

FACTS

M.S. was appellant Ming Sen Shiue's teacher in the 1960s. Appellant wrote about his fantasies of M.S., which included elements of sadistic sexual behavior. Appellant planned to kidnap M.S. to carry out his fantasies. In 1975, appellant broke into a home where he believed M.S. lived. M.S.'s relatives lived in the home and appellant held them bound at gunpoint. In 1979, appellant discovered where M.S. lived, stalked her, and attempted to break into her home three times. In May 1980, appellant kidnapped M.S. and her eight-year-old daughter, E.S., at gunpoint and forced them into the trunk of M.S.'s vehicle. Appellant stopped the vehicle at one point to check on his victims and a six-year-old boy approached. Appellant bludgeoned the boy to death.

Appellant took M.S. and E.S. to his home where he blindfolded and chained them in a closet. Appellant videotaped conversations with M.S. in which he attempted to remind her how she knew him. Over seven weeks, appellant frequently removed M.S. from the closet, tied her to furniture, and repeatedly raped her. Appellant often videotaped the rapes. When M.S. was uncooperative, appellant threatened to harm her family. On one such occasion, appellant placed a plastic bag over E.S.'s head until she could no longer breathe, forcing M.S. to comply with his demands. M.S. and E.S. eventually escaped, and appellant was arrested.

While he was in jail, appellant offered to pay another inmate to either murder M.S. and E.S. or help him escape. Appellant made a "down payment," and the inmate reported the plot to authorities. When M.S. testified during appellant's murder trial of the six-year-old boy, appellant raced toward the witness stand, jumped on her, and slashed her

face with a knife he had smuggled into the courtroom; 62 stitches were needed to close the wound on M.S.'s face. Appellant eventually pleaded guilty to second-degree murder and was sentenced to 480 months in prison. A federal jury later found appellant guilty of interstate transportation of kidnapped victims, and he was sentenced to life imprisonment.

While incarcerated, appellant was examined by at least five psychologists who reported the following about appellant: (1) he suffers from "deep emotional maladjustment, entitlement, and psychopathy"; (2) he has a "mixed personality disorder" with "characteristics of a narcissistic, antisocial and compulsive personality disorder"; (3) he desires "his own gratification and appear[s] callous and insensitive to the feelings of the victim, [which] is typical of an antisocial personality"; (4) he suffers from compulsive personality disorder with features of atypical paranoid disorder and sexual sadism; (5) his antisocial personality characteristics are evident from starting fires as a child, breaking into the home of M.S.'s relatives, the "antiauthoritarian quality" to his writings, and videotaping his rapes and mental torments of M.S.; (6) he suffers from a psychosexual disorder, which result[s] in "obsessive thoughts which he [cannot] block from his level of awareness"; (7) his "psychosexual disorder relate[s] to repeated inflictions of psychological and [] physical [harm] on a non-consenting partner in order to produce sexual excitement for himself"; (8) he shows "strong elements of schizoidism in the context of poor controls, capabilities for aggression and a psychosexual disorder"; (9) he has "psychosexual emotional problems and a considerable amount of hostility [and] an indication that he is able to use his intellect to control his feelings and behavior"; (10) he described his writings about M.S. as his "personal diary," and felt no shame or

guilt about the material because "[i]t was for [his] own use"; (11) his thoughts about M.S. were not "voluntarily produced," but were part of his "consciousness"; (12) his disorders were identified in childhood when he was involved in "peeping tomism [and] heightened sexual interest in [his] mother"; and (13) he admitted to experiencing an "uncontrollable urge" that caused his behaviors. Despite the professional conclusions that appellant suffers from psychosexual and personality disorders, appellant never sought psychological services that he knew were available to him during his incarceration. Appellant also never received sex-offender treatment.

Dr. Paul Reitman completed a psychosexual evaluation of appellant in preparation for the state's petition for appellant's civil commitment as an SDP/SPP. Dr. Reitman noted that appellant "could pay lip service," but felt no empathy; rather, he "felt victimized by the system," believing that he served his time and that M.S. was in love with him. Psychological testing indicated that appellant attempts to "posture himself in a favorable light." Dr. Reitman opined that appellant is an "untreated sex offender" and that he meets the statutory criteria as an SDP and as an SPP.

The district court held a trial on the state's petition for appellant's civil commitment in April 2010. Dr. Amanda Powers-Sawyer served as the first appointed examiner. She testified that appellant engaged in a habitual course of sexual misconduct evidenced by sexual offenses and sexually motivated offenses. Appellant's sexually motivated behavior included burglarizing the home of M.S.'s relatives, attempting to break into M.S.'s home, kidnapping M.S. and repeatedly raping her, and murdering the young witness. Dr. Powers-Sawyer diagnosed appellant with sexual sadism and

antisocial personality disorder. She explained that "sexual sadism is a paraphilia," which requires "sexual behavior, fantasies, or urges that persist for at least six months," and noted that appellant's fantasy writing began in late adolescence. Dr. Powers-Sawyer stated that appellant's diagnosis as a sexual sadist is also supported by his videotaped rapes of M.S., the transcripts of which included appellant stating that: "I've unburdened my hatred"; "I've evened the score"; "This has been planned"; "You will probably have emotional scars. That's the beauty of it"; "Do you want to fight? Fine. Nothing gets me more excited"; "I haven't even started"; "You haven't begun to suffer"; "It's an evil thing, isn't it"; "I have this anger and want to release it"; "I'm not going to give it to you all at once"; "I want to have my little fun here, okay"; and "That's the anger and hatred I have for you right now." Appellant's acts of chaining M.S., humiliating her, and frightening her further support his diagnosis as a sexual sadist. The blindfolding of M.S. is particularly supportive of the sexual-sadist diagnosis because, as Dr. Powers-Sawyer stated, "covering somebody's eyes [] is all part of what's used to determine sexual sadism." Dr. Powers-Sawyer stated that a sexual sadist is an "extreme" and "extremely rare" type of rapist who typically engages in abduction and sadistic rapes, much like appellant committed, as well as torture. Although Dr. Powers-Sawyer evaluated appellant using actuarial tools, she stated that there was a concern with using the tools in appellant's case because his offense was so extreme and rare. She stated that sexual sadists commonly score in the "low or moderate range in actuarial tools [] because the occurrences are rare," but that the risk involved with sexual sadists is high because they

often kill their victims. Dr. Powers-Sawyer concluded that appellant is highly likely to engage in harmful sexual conduct and is an SPP.

Dr. James Gilbertson reviewed the examiners' scoring of appellant on the Hare Psychopathy Checklist-Revised and testified that the scores reached by Dr. Reitman and Dr. Powers-Sawyer were "in line with one another" and that any difference was not "statistically meaningful." The second appointed examiner, Dr. Peter Marston, gave appellant a low score, which significantly concerned Dr. Gilbertson. Dr. Gilbertson testified that appellant is diagnosed with a paraphilia, and explained that "[p]araphilias are seen as long-standing aberrations in the sexual arousal sphere" and are "seen as relatively intractable," capable of management, but not cure. Dr. Gilbertson also stated that an Axis II diagnosis relates to an individual's personality structure, the characteristics of which are more or less "permanent," indicating that a person with an Axis II diagnosis is unlikely to change his thinking without treatment because a personality disorder involves "cognitive distortions." He stated that any attempt to treat a personality disorder can be seen by the patient with the disorder as "an attack on their very being."

Dr. Marston recommended that appellant receive inpatient treatment and opined that appellant is amenable to treatment because he accepted responsibility for his offenses and reported that he no longer has rape fantasies. Dr. Marston diagnosed appellant as having paraphilia "nonconsent," indicating that appellant is "sexually aroused by rape." He initially concluded that appellant is a sexual sadist, but retracted that diagnosis when

appellant reported that he is not sexually aroused by pain or humiliation. Dr. Marston admitted that he did not challenge appellant on his self-reporting.

On September 29, 2010, the district court found that appellant meets the criteria to be civilly committed as an SDP. The district court stated that the course of harmful sexual conduct is evidenced by the rapes of M.S. and his sexually motivated conduct, including: the burglary; stalking; murdering the child witness; kidnapping M.S. and E.S.; threatening to kill M.S. and her family to gain her compliance; and assaulting M.S. while she testified. The district court found that appellant suffers from a sexual, personality, or other mental disorder or dysfunction and that he is "highly likely" to engage in acts of harmful sexual conduct. The court determined that appellant suffered from "the paraphilia sexual sadism and a personality disorder." The court found Dr. Powers-Sawyer, Dr. Reitman, and Dr. Gilbertson to be credible, but found that Dr. Marston's opinion was neither convincing nor supported by the record; the court was "extremely uncomfortable" that Dr. Marston relied solely on appellant's self-reporting.

The district court also found that appellant meets the criteria to be civilly committed as an SPP because he (1) suffers from untreated emotional instability, (2) exhibits impulsive behavior, (3) demonstrates a lack of customary standards of good judgment, (4) fails to appreciate the consequences of his actions, and (5) evidenced a habitual course of sexual misconduct. The district court determined that appellant has an utter lack of power to control his sexual impulses. The court determined that appellant failed to prove by clear-and-convincing evidence that there is a less-restrictive alternative "that is consistent with [appellant's] treatment needs and the requirements of public

safety," and that the appropriate program for appellant is the Minnesota Sex Offender Program (MSOP). The district court ordered that upon appellant's release from federal prison, he shall immediately be transported to the custody of the MSOP. In November 2010, appellant's federal parole was denied.

D E C I S I O N

Appellant argues that the evidence is insufficient to support the district court's conclusions that he satisfies the requirements for commitment as an SDP and an SPP. The state must prove the facts necessary for commitment by clear-and-convincing evidence. Minn. Stat. §§ 253B.18, subd. 1(a), .185, subd. 1 (2010). This court defers to the district court's findings of fact and will not reverse those findings unless they are clearly erroneous. *In re Commitment of Ramey*, 648 N.W.2d 260, 269 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002). 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).

SDP Commitment

Appellant argues that the state failed to demonstrate with clear-and-convincing evidence that appellant is highly likely to reoffend because he is 60 years old. An SDP is one 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) "is likely to engage in acts of harmful sexual conduct." Minn. Stat. § 253B.02, subd. 18c(a) (2010). It is not necessary to prove that the person to be committed has an inability to control his sexual

impulses. *Id.*, subd. 18c(b) (2010). The statute requires a showing that the person's disorder "does not allow [him] to adequately control [his] sexual impulses." *In re Linehan* (*Linehan IV*), 594 N.W.2d 867, 876 (Minn. 1999).

Course of harmful sexual conduct

The district court must first find that appellant "has engaged in a course of harmful sexual conduct." Minn. Stat. § 253B.02, subd. 18c(a)(1). A "course" of conduct is defined by its ordinary meaning, which is "a systematic or orderly succession; a sequence." *Ramey*, 648 N.W.2d at 268 (quotation omitted). "Harmful sexual conduct" is "sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another." Minn. Stat. § 253B.02, subd. 7a(a) (2010). Convictions are not required; rather, the statute has been consistently interpreted as allowing consideration of all harmful sexual conduct or behavior. *See Ramey*, 648 N.W.2d at 268 (stating "that the course of conduct need not consist solely of convictions, but may also include conduct amounting to harmful sexual conduct [for] which the offender was not convicted").

There is clear-and-convincing evidence supporting the district court's finding that appellant engaged in a course of harmful sexual conduct. Appellant has exhibited disturbing behavior dating back to his adolescence. He developed a fixation on a teacher who was otherwise a stranger to him and stalked her over the course of many years. Appellant engaged in criminal behavior in an attempt to fulfill the fantasies he wrote about in his diary, which involved raping M.S. and causing her pain to satisfy his sexual urges. Appellant burglarized the home of M.S.'s relatives in an attempt to locate her; he attempted to break into M.S.'s home on at least three occasions; he kidnapped M.S. and

E.S.; he murdered a young witness; he held M.S. and E.S. captive for seven weeks; he repeatedly raped M.S. over those seven weeks; he threatened to kill M.S.'s family if she failed to cooperate with him; he sought an inmate to murder M.S. and E.S. after his arrest; and he assaulted M.S. when she testified against him. These acts demonstrate a course of harmful sexual conduct because each act, criminal and dangerous in itself, was motivated by, and resulted from, appellant's sexual impulses.

Further, Drs. Powers-Sawyer and Reitman testified that appellant has emotionally and physically harmed his victims. Appellant claims that he engaged in a "single course of conduct with a single intended victim," but repeated rapes over a seven-week period do not constitute a single course of conduct. And appellant may have had one *intended* victim, but he certainly affected many more victims. The record supports the district court's finding that appellant engaged in a course of harmful sexual conduct.

Adequate control

The district court must next find that appellant suffers from a mental abnormality or personality disorder that does not allow him to adequately control his sexual impulses. *Linehan IV*, 594 N.W.2d at 876. Appellant is diagnosed with personality disorders, including paraphilia and sexual sadism. Appellant argues that Dr. Powers-Sawyer misdiagnosed him as a sexual sadist, but even Dr. Marston testified that he originally believed that appellant is a sexual sadist; he changed his opinion based only on appellant's self-reporting. And there is sufficient evidence that appellant is highly intelligent and is able to pay "lip service" and posture himself in a favorable light. Dr. Reitman agreed that appellant is a sexual sadist. And this diagnosis was supported by

psychologists who examined appellant when he was initially incarcerated. The district court found the examiners' testimony to be persuasive. *See Ramey*, 648 N.W.2d at 269 (stating that appellate courts defer to the district court's evaluation of witness credibility). Clear-and-convincing evidence supports the statute's second prong.

Likelihood of reoffense

Finally, the district court must determine whether, as a result of appellant's course of misconduct and mental disorders or dysfunctions, he "is likely to engage in acts of harmful sexual conduct." Minn. Stat. § 253B.02, subd. 18c(a)(3). The phrase "likely to engage in acts of harmful sexual conduct" has been construed to require a showing that the offender is "highly likely" to engage in future harmful sexual conduct. *In re Linehan (Linehan III*), 557 N.W.2d 171, 180 (Minn. 1996), *vacated on other grounds sub nom. Linehan v. Minn.*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand sub nom. Linehan IV*, 594 N.W.2d 867. Six factors must be considered in examining the likelihood of reoffense: (1) the offender's demographic characteristics; (2) the offender's history of violent behavior; (3) the base-rate statistics for violent behavior among individuals with the offender's background; (4) the sources of stress in the offender's environment; (5) the similarity of the present or future context to those contexts in which the offender used violence in the past; and (6) the offender's record of participation in sex-therapy programs. *In re Linehan (Linehan I*), 518 N.W.2d 609, 614 (Minn. 1994). The record demonstrates that the six factors were considered and support the district court's conclusion that appellant is highly likely to reoffend.

1. Demographic characteristics

Appellant argues that he is 60 years old, which does not support his commitment. The district court was persuaded by Dr. Powers-Sawyer's testimony that appellant's age is irrelevant in the sexual-sadism context. Additionally, there is evidence that appellant's personality type and high intellect could cause him to become more dangerous with age. Further, the district court found it relevant that appellant used weapons in his offenses and that he would likely resort to weapon usage in reoffending; weapon usage has little to do with appellant's age. Appellant's antisocial behavior and sexual-sadism diagnosis trump any aging effect or reduction in his risk.

2. History of violent behavior

Appellant's history of violence dates back to his adolescence. There is evidence that he harmed his younger brothers and developed an objectionable fixation on his mother. Additionally, the violence appellant exhibited, not only in kidnapping and murder, but also depicted in his writings and video-recordings, show that he has a violent history. There was also testimony that a history of violence is one of the best predictors of future violent behavior.

3. Base-rate statistics

Base-rate statistics were problematic in this case. Dr. Powers-Sawyer, whom the district court found to be credible, testified that appellant presented a rare case and that there is not a large pool for comparison. The evidence also showed that with appellant's characteristics, even if there is not a predictable frequency of reoffense, any reoffense will likely result in the victim's death. Thus, the risk of reoffense is high because even if

appellant has only one victim, that victim may likely die as a consequence of appellant's offense.

4. Sources of stress in offender's environment

The record shows that appellant does not have a relapse plan or support system. The evidence further shows that appellant is impulsive and demonstrates poor judgment and may not feel accountable for his actions because he feels that he is victimized by the system.

5. Context

The fifth *Linehan* factor is the similarity of the present or future context to those contexts in which the offender used violence in the past. *Id.* The past context involved appellant fixating on an acquaintance, stalking her, kidnapping her, and raping her. Appellant, if released, will return to a similar context where he could develop another fixation. Appellant has stated that he felt that his fixation was not voluntary and just part of his "consciousness"; if that is the case, then a similar situation could arise without any conscious intent or warning.

6. Participation in sex-therapy programs

Appellant has not received any treatment.

Each factor indicates that appellant's risk of reoffending is highly likely. But appellant's argument seems to be more focused on challenging the credibility of the witnesses. Appellant claims that testing showed a low-moderate chance of him reoffending. But there is evidence that because of the rarity of the case, the testing results are most likely immaterial. Appellant asserts that Dr. Reitman is not credible and biased

and that Dr. Powers-Sawyer suffers from a "halo effect," causing her to score him incorrectly to secure his commitment. But the district court found these examiners to be credible; thus, the district court did not err by concluding that appellant satisfies the requirements for commitment as an SDP.

SPP Commitment

Appellant also argues that he does not meet the requirements for commitment as an SPP. An SPP is 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 (2010). 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. The psychopathic personality "excludes mere sexual promiscuity" and "other forms of social delinquency." *In re Blodgett*, 510 N.W.2d 910, 915 (Minn. 1994). But the personality "is an identifiable and documentable violent sexually deviant condition or disorder." *Id.*

Habitual course of misconduct

Appellant argues that there is insufficient evidence to support his commitment as an SPP because he is 60 years old and he has been a good prisoner. The record supports the district court's finding that appellant engaged in a habitual course of misconduct,

which involved the sexually motivated behavior analyzed in the SDP section. Thus, the district court did not err in concluding that appellant engaged in a habitual course of sexual misconduct.

Utter control

In considering the second element of an SPP analysis, the district court must weigh several significant factors: (1) "the nature and frequency of the sexual assaults"; (2) "the degree of violence involved"; (3) "the relationship (or lack thereof) 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) any factors "that bear on the predatory sex impulse and the lack of power to control it." *Id.*

1. Nature and frequency of the sexual assaults

Appellant argues that he engaged in a single incident. Appellant repeatedly raped M.S. over the course of seven weeks. When he was not raping her, he kept her locked in a small closet. Appellant raped M.S. in the manner in which he wrote about years earlier. The video-recordings of appellant raping M.S. demonstrate that he sought to humiliate and harm M.S. for his sexual gratification.

2. Degree of violence involved

Appellant argues that his crimes occurred 30 years ago; therefore, the violence involved is no longer relevant. Appellant's offenses—kidnapping, rape, and murder—were violent.

3. Relationship (or lack thereof) between the offender and the victim

M.S. taught appellant in the 1960s. Appellant tracked M.S. over the course of many years. He abducted her in 1980. Appellant videotaped himself attempting to get M.S. to figure out his identity. M.S. had no recollection of appellant. M.S. and appellant had no present-day relationship, which shows appellant's heightened risk.

4. Offender's attitude and mood

Appellant argues that he no longer seeks sexual gratification. Dr. Powers-Sawyer testified that appellant harbors "intense anger" associated with sex and women. She stated that he obsessed over M.S. and unleashed his hostility toward others. Dr. Powers-Sawyer testified that appellant has a negative perception of other people. There is also evidence that appellant fails to exhibit any signs of empathy.

5. Offender's medical and family history

Although appellant claims that he has medical conditions that make him less of a risk, this factor does not seem to be relevant. The record shows that although appellant may suffer from high blood pressure, anemia, and arthritis, these conditions most likely would not lessen his risk because he used weapons, bondage, and blindfolding to control his victims. He also emotionally tormented M.S. into compliance by threatening to harm her family.

6. Results of psychological and psychiatric testing and evaluation

Testing and evaluations indicate that appellant suffers from a personality disorder, paraphilia, and sexual sadism. The examiners testified that appellant is an untreated sex-offender. There is evidence that appellant's characteristics will remain unchanged if not

managed through treatment. Appellant has not received any treatment to manage his disorders; rather, he claims to have cured himself. This assertion was dismissed by the professionals who examined appellant and testified that appellant most likely does not believe that he has personality disorders. Thus, without acknowledging that a problem exists, appellant will not seek nor benefit from treatment.

7. Factors that bear on the predatory sex impulse and the lack of power to control it

Appellant has a history of impulsive behavior, poor judgment, and failure to recognize consequences of his actions. The record shows that appellant has admitted lack of control over his impulses.

Dangerousness to others

To determine whether an offender is dangerous to others, the district court must consider the same factors analyzed in determining whether an offender is highly likely to reoffend; in other words, if a person is highly likely to reoffend, he is also dangerous. *Linehan I*, 518 N.W.2d at 614. As discussed above in the analysis of the SDP criteria, appellant is dangerous to others and highly likely to reoffend. Accordingly, the district court did not err in determining that appellant meets the requirements for commitment as an SPP.

Less-Restrictive Alternative

Appellant argues that there is a less-restrictive alternative available to him in the form of in-custody sex-offender treatment followed by intensive parole. The district court concluded that appellant failed to prove by clear-and-convincing evidence that there

is a less-restrictive alternative consistent with appellant's needs and the requirements of public safety.

When the state proves that an individual meets the requirements for civil commitment as an SDP or an SPP, "[t]he court shall commit the patient to a secure treatment facility unless the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient's treatment needs and the requirements of public safety." Minn. Stat. § 253B.18, subd. 1(a). Minnesota law "does not require that commitments be made to the least-restrictive treatment program." *In re Kindschy*, 634 N.W.2d 723, 731 (Minn. App. 2001), *review denied* (Minn. Dec. 19, 2001). Under the statutory framework, "patients have the *opportunity* to prove that a less-restrictive treatment program is available, but they do not have the *right* to be assigned to it." *Id.*

Appellant relies on Dr. Marston's recommendation that appellant receive inpatient treatment in prison. First, the district court did not find Dr. Marston to be credible. Thus, appellant failed to show by clear-and-convincing evidence that a less-restrictive alternative is available to him. Second, there is an issue with availability of treatment, because sex-offender treatment is not available to appellant. Appellant is in federal custody. His parole was denied. A federal inmate is not offered sex-offender treatment until he has only 36 months remaining on his sentence. Without a parole date, sex-offender treatment is not available to appellant. Therefore, because appellant failed to show that a less-restrictive alternative is available to him, the district court did not err in ordering his civil commitment.

Due Process

Finally, appellant argues that he was denied due process when he was denied parole and the opportunity to receive sex-offender treatment. The district court did not deny appellant's parole; a federal commission denied appellant's parole. Thus, the district court did not deny appellant his right to due process. Additionally, it is the rule of the federal prison system that a prisoner may receive sex-offender treatment when he has only 36 months remaining on his sentence, this is not a state institution rule. Appellant is not currently in the state prison system; thus, the district court had no authority to deal with appellant's access to treatment, which is governed by the federal institution rules. The district court concluded that the state proved by clear-and-convincing evidence that appellant meets the statutory criteria for commitment as an SDP and an SPP. The district court considered all relevant factors in reaching its conclusion; whether appellant received, or will receive, sex-offender treatment was merely one consideration. The district court did not err in ordering appellant's civil commitment when/if he is released from federal custody.

Affirmed.