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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2250**

In the Matter of the Civil Commitment of: Jason Duane Sveen

**Filed July 5, 2011
Affirmed
Peterson, Judge**

Fillmore County District Court
File No. 23-PR-09-1209

Frederick S. Suhler, Jr., Rochester, Minnesota (for appellant Jason Duane Sveen)

Lori Swanson, Attorney General, Scott E. Haldeman, Assistant Attorney General, St. Paul, Minnesota; and

Brett A. Corson, Fillmore County Attorney, Preston, Minnesota (for respondent State of Minnesota)

Considered and decided by Peterson, Presiding Judge; Worke, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from an order granting a petition to indeterminately commit appellant Jason Duane Sveen as a sexual psychopathic personality (SPP) and as a sexually dangerous person (SDP), appellant argues that (1) because he has successfully completed sex-offender treatment, the evidence does not support the conclusion that he is highly likely to reoffend; (2) the district court abused its discretion and violated his

procedural-due-process rights by allowing a witness to testify by telephone; and (3) the commitment provisions of the SPP statute and the SDP statute violate substantive due process and constitutional prohibitions against double jeopardy and ex post facto laws. We affirm.

FACTS

In December 2009, Fillmore County petitioned to civilly commit appellant as an SPP and an SDP. The district court appointed Dawn Peuschold, Ph.D., as the first examiner, and, at appellant's request, the district court appointed James Alsdurf, Ph.D., to serve as an independent second examiner. The county retained Harry Hoberman, Ph.D., as an expert witness. Following a trial in April 2010, the district court issued extensive findings of fact and conclusions of law and ordered appellant committed on an interim basis. Following a review hearing, the district court ordered that appellant be indeterminately committed as an SPP and an SDP. This appeal follows.

D E C I S I O N

I.

An appellate court's review of a judicial commitment is limited to determining whether the district court complied with the Minnesota Commitment and Treatment Act and whether the commitment is justified by findings based on evidence submitted at the hearing. *In re Shaefer*, 498 N.W.2d 298, 300 (Minn. App. 1993); *see* Minn. Stat. § 253B.01 (2010) (act title). Findings of fact will not be set aside unless clearly erroneous. *In re Joelson*, 385 N.W.2d 810, 811 (Minn. 1986). The record is viewed in the light most favorable to the decision and “[d]eference is given to the district court’s

opportunity to judge the credibility of witnesses.” *In re Commitment of Ramey*, 648 N.W.2d 260, 269 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002). But whether there is clear and convincing evidence in the record to satisfy the statutory elements for civil commitment is a question of law reviewed de novo. *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994) (*Linehan I*).

“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.

Minn. Stat. § 253B.02, subd. 18b (2010).

Commitment as an SPP requires a showing that the person has an utter lack of power to control the person’s sexual impulses. *Linehan I*, 518 N.W.2d at 613. The supreme court has set out factors for the district court to consider when determining whether a person has exhibited an utter lack of power to control sexual impulses. *In re Blodgett*, 510 N.W.2d 910, 915 (Minn. 1994). A court should consider

the nature and frequency of the sexual assaults, the degree of violence involved, the relationship (or lack thereof) between the offender and the victims, the offender’s attitude and mood, the offender’s medical and family history, the results of psychological and psychiatric testing and evaluation, and such other factors that bear on the predatory sex impulse and the lack of power to control it.

Id. The district court specifically addressed each of these factors and found that appellant lacks the ability to control his sexual impulses.

To commit a person as an SDP, the petitioner must prove, by clear and convincing evidence, that the person (1) “engaged in a course of harmful sexual conduct”; (2) “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. § 253B.02, subd. 18c(a) (2010). The statutory phrase “likely to engage in acts of harmful sexual conduct” means that the person is “highly likely” to engage in harmful sexual conduct. *In re Linehan*, 557 N.W.2d 171, 180 (Minn. 1996) (*Linehan III*), *vacated on other grounds and remanded*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff’d on remand*, 594 N.W.2d 867 (Minn. 1999) (*Linehan IV*).

The supreme court has set forth six factors to be considered in examining the likelihood that an offender will engage in harmful sexual conduct: (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. *Linehan I*, 518 N.W.2d at 614. The district court made detailed findings on each of the six *Linehan* factors and determined that appellant is highly likely to engage in harmful sexual conduct in the future.

Without specifically addressing any of the district court's findings, appellant notes that he successfully completed sex-offender treatment at Lino Lakes and argues that the district court's "findings and conclusions are an unreasonable view of the evidence of the value of [appellant's] successful completion of sex offender treatment." He further argues that "[t]he District Court's conclusion that [he] meets the criterion for commitment as an SDP and SPP despite the investment of almost 47 months of effort by [appellant] and those staff members involved in the [Sex Offender Treatment Program at Lino Lakes (SOTP-LL)] defies logic and common sense." But a person can meet the requirements for civil commitment despite completing treatment programs. *See In re Pirkl*, 531 N.W.2d 902, 904, 909-10 (Minn. App. 1995) (upholding commitment of person who had completed sex-offender treatment program in prison), *review denied* (Minn. Aug. 30, 1995). Furthermore, appellant's argument regarding the value of completing sex-offender treatment goes to the weight and credibility of evidence. When the findings of fact rest almost entirely on expert-opinion testimony, the district court's "evaluation of credibility is of particular significance." *Joelson*, 385 N.W.2d at 811. It is not this court's role to reweigh the evidence. *See Linehan III*, 557 N.W.2d at 189 (stating that appellate court "will not weigh the evidence").

The record shows that all three experts opined and testified that appellant gained little from treatment. Alsdurf opined and testified that despite appellant's completion of SOTP-LL "he hasn't learned enough yet to significantly reduce his likelihood of recidivating." Peuschold similarly stated that "[i]t doesn't appear that the programming [appellant] has had so far has been successful for him." Hoberman testified that appellant

is a clinical psychopath and that clinical psychopaths have been found to have a higher recidivism rate after completing a sex-offender treatment program. The district court specifically found the opinions of Alsdurf, Peuschold, and Hoberman to be credible with respect to appellant's likelihood of reoffending and that appellant is highly likely to sexually reoffend. The district court did not clearly err in concluding that there is clear and convincing evidence that appellant lacks the ability to control his sexual impulses and that appellant is highly likely to reoffend and that he meets the criteria for indeterminate commitment as an SPP and an SDP.

II.

Appellant contends that his due-process rights were violated and that he was deprived of meaningful cross-examination because the district court allowed J.S., who is one of appellant's victims, to appear by telephone to testify at trial. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time in a meaningful manner." *Brooks v. Comm'r of Pub. Safety*, 584 N.W.2d 15, 19 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. Nov. 24, 1998). "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 2600 (1972). The question of whether a person's procedural due-process rights have been violated is reviewed de novo. *Zellman ex rel. M.Z. v. Indep. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220 (Minn. App. 1999), *review denied* (Minn. July 28, 1999). But "[t]he mode, manner, and method of receiving testimony is a matter resting almost wholly in the discretion of the [district]

court and does not furnish grounds for a new trial unless some prejudice can be shown.” *Manion v. Tweedy*, 257 Minn. 59, 67-68, 100 N.W.2d 124, 130 (1959).

In commitment proceedings, the district court is directed to “admit all relevant evidence at the hearing.” Minn. Stat. § 253B.08, subd. 7 (2010); *see also In re Morton*, 386 N.W.2d 832, 835 (Minn. App. 1986) (stating that there is a presumption of admissibility in all commitment cases). “The Commitment and Treatment Act Rules apply to proceedings under the Minnesota Commitment and Treatment Act and purport to ‘supersede any other body of rules otherwise applicable.’” *In re Commitment of Williams*, 735 N.W.2d 727, 730 (Minn. App. 2007) (quoting Minn. Spec. R. Commit. & Treat. Act 1(a)-(b)), *review denied* (Minn. Sept. 26, 2007). Rule 14 provides that

[a] hearing may be conducted or an attorney for a party, a party, or a witness may appear by telephone, audiovisual, or other electronic means if the party intending to use electronic means notifies the other party or parties at least 24 hours in advance of the hearing and the court approves.

Minn. Spec. R. Commit. & Treat. Act 14.

In this case, the county filed a notice and request for J.S. to appear by telephone on April 13, 2010. Over appellant’s objections, the district court approved the request on April 14, 2010, and J.S. testified by telephone the next day. Thus, J.S.’s testimony complied with the requirements of rule 14 for presenting telephonic testimony. And although the district court noted that personal observation of J.S. was not possible because J.S. appeared by telephone, the district court also noted that “her tone of voice and content demonstrated substantial emotional involvement” and found that J.S. was “largely credible.” Because the district court did not abuse its discretion when it allowed

J.S. to appear by telephone, appellant has not demonstrated that he is entitled to a new trial.

III.

In the district court, appellant filed motions requesting rulings that SPP and SDP commitment procedure, process, and confinement violate his substantive-due-process rights and constitutional prohibitions against double jeopardy and ex post facto laws. Appellant acknowledges on appeal that the district court's rejection of these constitutional challenges is consistent with Minnesota Supreme Court decisions. *See Linehan IV*, 594 N.W.2d at 871-76 (holding that the SDP statute does not violate substantive-due-process rights and reaffirming prior holding that the statute does not violate the ban on double jeopardy and ex post facto laws); *Blodgett*, 510 N.W.2d at 916 (holding that commitment under the psychopathic personality statute, a precursor of the current SPP statute, does not violate substantive due process). Appellant also acknowledges that this court lacks authority to overturn established supreme court precedent. Because we cannot overturn established supreme court precedent and appellant does not argue that his constitutional challenges have not been addressed by established precedent, we reject appellant's constitutional challenges to SPP and SDP commitment procedure, process, and confinement. *See State v. Ward*, 580 N.W.2d 67, 74 (Minn. App. 1998) (stating that as an intermediate appellate court, this court is "not in [a] position to overturn established supreme court precedent").

Affirmed.