STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1898

In the Matter of the Civil Commitment of: Christopher Jacob Reid.

Filed February 21, 2012
Affirmed
Worke, Judge

Anoka County District Court
File No. 02-PR-10-245

James S. Dahlquist, Minneapolis, Minnesota (for appellant Christopher Jacob Reid)

Anthony C. Palumbo, Anoka County Attorney, Francine P. Mocchi, Assistant County Attorney, Anoka, Minnesota (for respondent Anoka County)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Randall, Judge.*

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

WORKE, Judge

Appellant challenges his indeterminate commitment as a sexually dangerous person (SDP), arguing that (1) his commitment is not supported by clear-and-convincing evidence, and (2) his due-process rights were violated. We affirm.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

D E C I S I O N

Commitment

Appellant Christopher Jacob Reid pleaded guilty to two counts of fifth-degree criminal sexual conduct stemming from his molestation of two young children in a public swimming pool. Anoka County then filed a civil-commitment petition prompting a series of psychosexual evaluations, during which appellant admitted to sexually victimizing 38 children ranging in age from 3 to 17 years old during the previous 18 months. Appellant was committed as an SDP and now argues that his commitment was not supported by clear-and-convincing evidence. Whether evidence is sufficient to meet the standard for commitment is a question of law reviewed de novo. *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994) (*Linehan I*). The criteria for commitment must be met by clear-and-convincing evidence. Minn. Stat. §§ 253B.18, subd. 1(a), .185, subd. 1(c) (2010).

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); *In re Linehan*, 557 N.W.2d 171, 180 (Minn. 1996) (*Linehan III*) (establishing degree of likelihood as "highly likely"), *vacated and remanded on other grounds sub nom. Linehan v. Minn.*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand sub nom. In re Linehan*, 594 N.W.2d 867 (Minn. 1999) (*Linehan IV*). There must also be a showing that the individual's disorder does not allow adequate control of sexual impulses, *Linehan IV*, 594 N.W.2d at 876, or that the disorder causes serious

difficulty in controlling sexual behavior. *In re Commitment of Ramey*, 648 N.W.2d 260, 268 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002).

Appellant's only substantive argument is that he is not highly likely to reoffend and, therefore, does not meet the definition of an SDP. Six factors are considered in predicting an individual's likelihood to reoffend: (1) relevant demographic characteristics; (2) history of violent behavior; (3) base-rate statistics for violent behavior for those of the individual's background; (4) sources of stress in the environment; (5) similarity of the present or future context to contexts in which the individual has used violence in the past; and (6) the individual's record with respect to sex-therapy programs. *Linehan I*, 518 N.W.2d at 614. An appellate court will not reverse a district court's "findings unless they are clearly erroneous." *In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995).

In asserting that he is not likely to reoffend, appellant points to his completion of several stages of an Anoka County sex-therapy program in which he was enrolled at the time that the petition was filed. Appellant asserts that his progress convinced the court-appointed examiner, Dr. James Gilbertson, that he may be ready for treatment in the community provided certain safeguards existed. Additionally, appellant argues that Dr. Gilbertson conducted actuarial assessments prior to appellant completing the third phase of treatment in the Anoka program; thus, any statistical evidence indicating a likelihood of reoffense should be discounted.

Appellant's arguments are unconvincing. The district court found that appellant is an unmarried 19-year-old male without a history of consensual adult relationships,

demographic characteristics that increase the risk of appellant reoffending. The district court noted that appellant has no history of violent physical behavior, but does have a history of sexually assaultive behavior. The district court noted that Dr. Gilbertson conducted a STATIC-99R test with appellant. The results indicated a 26-44% probability of appellant reoffending between five and ten years, which is approximately 13-26% greater than the base rate; thus, base-rate statistics also indicate a likelihood of reoffense. The district court also relied on Dr. Gilbertson's testimony in determining that there would be a high level of stress in appellant's environment given the large number of victims in the area as well as appellant's poor work history and academic progress. This factor also supports a high likelihood of reoffense. Because appellant lacks a history of physical violence, the district court made no finding regarding the similarity of future contexts to those giving rise to violence in the past.

The district court also extensively recounted appellant's poor performance in sex-therapy programs dating back to before his convictions. Respondent first received treatment from Project Pathfinders beginning in August 2004 until his discharge in February 2005, when the program determined that he needed a more-focused, sex-specific treatment program. Appellant was then admitted to the Mille Lacs Academy, where he initially made progress and completed the first phase of treatment. But appellant was discharged from the program prior to completing the second phase of treatment; his discharge report noted appellant's "highly sophisticated grooming techniques with other residents" and cited several incidents of sexual misbehavior with other patients.

The district court noted the progress appellant made in the Anoka program, which appellant currently advances as support for his contention that he is not likely to reoffend. But the district court also found that while enrolled in the Anoka program, appellant was cited for inappropriate sexual behavior 12 times between March 2009 and September 2010. Of the more serious citations, appellant was reprimanded for: attempting to expose his penis to another patient; touching another patient's crotch area; and admitting during group treatment that he discovered another patient's semen in the shower, became aroused, scraped it off the shower drain, licked it, and masturbated. Thus, despite the progress appellant achieved in the Anoka county program, he still exhibits extremely troublesome sexual misconduct. Accordingly, appellant's history of sex treatment also supports a high likelihood of reoffense. Based on the *Linehan* factors, the district court determined that appellant was highly likely to reoffend. This determination is supported by clear-and-convincing evidence.

Regarding the other SDP factors, appellant simply asserts that he: "disputes that he satisfies any of the [other] components of the SDP statute! The facts in this case support [a]ppellant's position." This argument is mere assertion unsupported by legal authority; thus, appellant's argument pertaining to the remaining factors is waived. *State by Humphrey v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997); *see also see also McKenzie v. State*, 583 N.W.2d 744, 746 n.1 (Minn. 1998) (indicating that although appellant "allude[d]" to issues, failure to "address them in the argument portion of his brief" constituted waiver). As such, the district court correctly determined that appellant meets the standard for commitment as an SDP.

Constitutional Arguments

Appellant also alleges that his procedural-due-process rights were violated. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and 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. Brewe*r, 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).

Appellant broadly alleges that his due-process rights were violated because the county did not conduct a prepetition screening before seeking commitment. This argument is unavailing. As the county argues, there is no requirement that a prepetition screening be completed prior to the filing of a commitment petition. Rather, the need for a prepetition screening is left to the discretion of the county attorney. *See* Minn. Stat. § 253B.185, subd. 1(b) (2010) ("Before commitment proceedings are instituted, the facts shall be submitted to the county attorney, who, if satisfied that good cause exists, will prepare the petition. The county attorney *may* request a prepetition screening report.") (Emphasis added.) Here, the filing of appellant's petition was time-sensitive: appellant was scheduled for release without having completed treatment at the Anoka program merely ten months after his convictions capped an 18-month period during which he sexually assaulted 38 victims. And although the county attorney declined to utilize the

prepetition-screening process, an Anoka County multi-departmental SPP[1]/SDP panel reviewed appellant's sex-therapy records and psychological evaluations and made a recommendation to the county attorney as to whether commitment was appropriate. Thus, the decision to petition for commitment was based on the same type of information that would have been outlined in a prepetition-screening report. Accordingly, appellant fails to demonstrate that the lack of a discretionary prepetition screening constitutes a due-process violation.

Appellant also appears to argue that his due-process rights were violated by the systematic failure to place him in a less-restrictive treatment program. Appellant claims that it was the responsibility of the Anoka program to make a referral to the county, which would then act to obtain the applications and funding necessary to secure placement in a less-restrictive treatment program. Appellant argues that: "The process is very specialized. It is fundamentally unfair to place such a burden on either a 19 year old [a]ppellant or his legal counsel."

This argument is plainly contradicted by caselaw. The burden is on the proposed patient to prove that a less-restrictive treatment program exists that is consistent with treatment needs and community safety. *In re Kindschy*, 634 N.W.2d 723, 731 (Minn. App. 2001), *review denied* (Minn. Dec. 19, 2001). Moreover, "[u]nder the [commitment] statute, 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.* Thus, even if the county had secured a less-restrictive treatment program as an alternative to commitment,

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appellant would not necessarily have been entitled to the alternative program. And the district court soundly reasoned that appellant failed to demonstrate that such a program existed that would meet his treatment needs while appropriately balancing concerns for public safety. Accordingly, appellant's argument fails.

Affirmed.