STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1129

In the Matter of the Civil Commitment of: Robert Lee Smith

Filed December 10, 2012
Affirmed
Toussaint, Judge[*]

Hennepin County District Court
File No. 27-MH-PR-11-20

Stephen D. Radtke, Bloomington, Minnesota (for appellant Smith)

Michael O. Freeman, Hennepin County Attorney, John L. Kirwin, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County)

Considered and decided by Bjorkman, Presiding Judge; Cleary, Judge; and Toussaint, Judge.

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

TOUSSAINT, Judge

In this appeal from his civil commitment as a sexually dangerous person (SDP), appellant Robert Lee Smith raises constitutional issues of substantive due process, double jeopardy, equal protection, and denial of trial by jury, and claims that the district court erred by determining that he should be committed as an SDP. 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

This court reviews a district court's findings in a civil commitment case for clear error and determines de novo whether the findings satisfy the statutory requirements for civil commitment. *In re Civil Commitment of Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006), *review denied* (Minn. June 20, 2006). We will reverse the district court's findings of fact only if they are clearly erroneous. *Id*. On questions of law, such as the constitutionality of a statute, we apply de novo review. *State v. Martin*, 773 N.W.2d 89, 97 (Minn. 2009); *Hamilton v. Comm'r of Pub. Safety*, 600 N.W.2d 720, 722 (Minn. 1999).

Under the civil commitment statute, a person is a "sexually dangerous person" if he or she has "(1) engaged in a course of harmful sexual conduct . . .; (2) has 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 (2010). "Harmful sexual conduct" is defined to include "sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another." *Id*., subd. 7a (2010). A "course of harmful sexual conduct" is not limited to convictions, but "may also include conduct amounting to harmful sexual conduct [for] which the offender was not convicted." *In re Civil Commitment of Ramey*, 648 N.W.2d 260, 268 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002). Appellant's SDP commitment was based on three felony-level criminal-sexual-conduct convictions, one of which involved a first-degree offense, and a federal kidnapping conviction that included a violent sexual assault of appellant's then-wife.

I.
Constitutional Claims

Appellant raises constitutional issues of substantive due process, double jeopardy, equal protection, and right to trial by jury. These issues have been raised, considered, and rejected in prior Minnesota civil commitment cases, and we are constrained to follow the law. We will address each of appellant's arguments briefly.

Substantive Due Process

Appellant asserts that the civil-commitment statute is "deficient" because it violates his substantive due-process rights under *Kansas v. Hendricks*, 521 U.S. 346, 117 S. Ct. 2072 (1997), and *Kansas v. Crane*, 534 U.S. 407, 122 S. Ct. 867 (2002). *Hendricks* required that a civil-commitment statute contain a lack of volitional control element that must exist before a sex offender can be civilly committed. 521 U.S. at 358, 117 S. Ct. at 2080. *Crane* refined *Hendricks* to require some lack of control, rather than a total or complete lack of control, before an SDP person may be committed. 534 U.S. at 411-12, 122 S. Ct. at 870. According to appellant, these cases provide a rule of substantive due process that limits the power of the state to civilly commit persons, and Minnesota has exceeded this limit.

This argument has been fully addressed and rejected by the Minnesota Supreme Court. In *In re Linehan*, 594 N.W.2d 867, 872-76 (Minn. 1999) (*Linehan IV*), the court rejected the argument that statutory language of the commitment statute violates *Hendricks.* The court ruled that the commitment statute permits commitment of an SDP "whose present disorder or dysfunction does not allow [the person] to adequately control

[his] sexual impulses, making it highly likely that [he] will engage in harmful sexual acts in the future." 594 N.W.2d at 876; *see In re Civil Commitment of Martin*, 661 N.W.2d 632, 640 (Minn. App. 2003) (rejecting civil commitment claimant's substantive due-process argument because it "was explicitly addressed" and rejected in *Linehan IV*), *review denied* (Minn. Aug. 5, 2003); *Ramey*, 648 N.W.2d at 265-67 (tracing the history of *Hendricks*, *Crane*, and *Linehan IV*, and concluding "the requirement of an inability to control behavior to some degree . . . is satisfied by the interpretation of the SDP act as set forth in *Linehan IV*").

Double Jeopardy

Appellant next asserts that because the conduct for which a person is civilly committed is typically criminal conduct, and because civil commitment amounts to punitive preventative detention rather than treatment, his civil commitment violates the constitutional prohibition against double jeopardy. *See* U.S. Const. amend. V; Minn. Const. art. I, § 7. This precise argument has been raised and rejected numerous times by the courts of this state. In *Linehan IV*, the supreme court ruled that the SDP commitment statute does not violate double jeopardy because it is a civil statute that requires neither a prior criminal conviction nor criminal intent, and mandates that the committed person be released "once he or she is sufficiently rehabilitated and control his or her sexual impulses." 594 N.W.2d at 871. The *Linehan IV* court also noted that the purpose of the civil commitment statute is not punitive. *Id.* at 871-72; s*ee Martin*, 661 N.W.2d at 641 (rejecting double-jeopardy claim in SDP case).

Equal Protection

Appellant further argues that the SDP commitment statute violates his constitutional rights to equal protection because it treats sex offenders differently than others who have committed crimes. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 2. This issue is addressed in *In re Linehan*, 557 N.W.2d 171 (Minn. 1996) (*Linehan III*), *vacated on other grounds*, 552 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand by Linehan IV*. In *Linehan III*, the supreme court held that the SDP commitment statute did not violate equal-protection principles because "interests in public protection and treatment would be reasonably served by a distinction between sexually dangerous persons with and without mental disorders." 557 N.W.2d at 186; *see In re Blodgett*, 510 N.W.2d 910, 917 (Minn. 1994) (stating that "the sexual predator poses a danger that is unlike any other"). Appellant's equal-protection argument also fails.

Right to Jury Trial

Appellant's final constitutional argument is that he had a right to a jury trial before he could be civilly committed. The Minnesota Supreme Court has rejected this argument with regard to civil-commitment proceedings. Appellant recognizes that this is the law, but he asserts that "the time is right for a renewed review of the right to jury trials in these cases[.]" Because the law is settled on this point, we conclude that appellant's argument is without merit. *See, e.g.*, *State ex rel. Pearson v. Probate Court*, 205 Minn. 545, 556-57, 287 N.W. 297, 303 (1939); *Joelson v. O'Keefe*, 594 N.W.2d 905, 910 (Minn. App. 1999), *review denied* (Minn. July 28, 1999).

II.
Substantive Claims

Appellant makes two arguments to challenge the factual basis for his commitment: he asserts that the district court erred in finding that he met the statutory definition of a sexually dangerous person and erred in committing him because he has "changed."

As to the claim of failure to satisfy the statutory requirements for commitment, appellant argues that he is not an SDP because his sex-related offenses were committed within a two-year period and because the last offense occurred thirteen years before the commitment hearing. He also notes that he was at large in the community for over a year-and-a-half before re-offending and that his sex offenses were different from each other.

Appellant's arguments do not demonstrate that the district court erred in finding appellant to be an SDP, because he met all of the statutory criteria for commitment. Appellant engaged in a course of harmful sexual conduct that included four separate violent sex offenses. This pattern of conduct, even though it occurred during the years 1988, 1996, and 1998 (two incidents), the last incident occurring over ten years ago, is sufficient to constitute a course of harmful sexual conduct. *See Stone*, 711 N.W.2d at 837 (defining course of harmful sexual conduct for determination of SDP purposes as a succession of actions over a period of years, including conduct that did not result in criminal conviction), *see also In re Civil Commitment of Williams*, 735 N.W.2d 727, 731 (Minn. App. 2007) (stating that "[i]ncidents establishing a course of harmful sexual conduct need not be recent and are not limited to those that resulted in a criminal

conviction"), *review denied* (Minn. Sept. 26, 2007). Appellant has been incarcerated since 2002, and he had little opportunity to commit crimes during the short periods that he was released from prison; two offenses occurred while he was on supervised release.

Appellant does not challenge the court examiners' diagnoses that he has manifested a "sexual," "personality," or "mental disorder" within the meaning of the SDP statute. Both examiners diagnosed him with Axis I disorders of paraphilia NOS and Axis II personality disorder. However, he challenges the district court's finding that he is likely to engage in future acts of harmful sexual conduct, the third statutory SDP commitment factor. *See Stone*, 711 N.W.2d at 840 (listing the six factors the district court must consider to predict likelihood of engaging in harmful sexual acts in the future). Two examiners independently interviewed appellant, reviewed his records, conducted diagnostic tests, filed reports, and testified at trial. After this review, Dr. Amanda Powers-Sawyer concluded that appellant was "highly likely" to reoffend, and Dr. Thomas Alberg opined that appellant is "at a considerably higher risk than the average person for reoffending." While appellant highlights his own testimony at the commitment review hearing that he has "changed" and is prepared to reenter society, other evidence strongly supports the district court's conclusion that appellant is highly likely to engage in harmful sexual acts in the future. We decline to disturb the district court's findings or conclusions, based on this record.

Affirmed.