STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1286

In the Matter of the Civil Commitment of: Lance Phillip Wickner

Filed November 26, 2012
Affirmed
Connolly, Judge

Beltrami County District Court
File No. 04-PR-10-3284

Arlen Larson, Arlen Larson Law Office, Bagley, Minnesota (for appellant)

Lori Swanson, Attorney General, John D. Gross, Assistant Attorney General, St. Paul, Minnesota; and

Timothy R. Faver, Beltrami County Attorney, Bemidji, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Kalitowski, Judge; and Crippen, Judge.*

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

CONNOLLY, Judge

In this civil-commitment appeal, appellant challenges the district court's order denying his motion for a new trial pursuant to Minn. R. Civ. P. 59, following the court's order initially committing appellant as a sexual psychopathic personality (SPP) and a

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

sexually dangerous person (SDP). Appellant argues that the district court erred in denying his motion for a new trial so he could introduce evidence on the constitutionality of Minn. Stat. § 253B.18, the Minnesota Civil Commitment Act (MCCA), as applied in the commitment of an SPP pursuant to Minn. Stat. § 253B.02, subd. 18(b) (2010) and an SDP pursuant to Minn. Stat. § 253B.02, subd. 18(c) (2010). Because the district court did not err in denying appellant's motion for a new trial, we affirm.

FACTS

On July 15, 2011, respondent Beltrami County filed a petition seeking to commit appellant Lance Phillip Wickner as an SDP and SPP. At the time, appellant was serving a sentence at the Minnesota Correctional Facility at Oak Park Heights. The district court issued an order to hold appellant at the Minnesota Sex Offender Program (MSOP) until the court issued its order to commit or release him.

Appellant was examined by two court-appointed psychologists, both of whom supported appellant's commitment as SDP and SPP. Before trial, appellant's attorney moved to withdraw his representation. At trial, the district court denied the attorney's motion to withdraw, finding that the attorney was competent to represent appellant. At that time, appellant's attorney explained to the district court that appellant wanted him to raise issues that the attorney did not think he could properly raise. The district court explained to appellant that his attorney had an ethical duty not to raise frivolous motions, but that the district court would consider and rule on the issues raised by appellant pro se. The issues appellant wished to raise involved: (1) whether MSOP is punitive and negates the civil nature of the statute; (2) violation of appellant's double-jeopardy rights; and

(3) violation of the constitutional prohibition on ex post facto laws. The district court noted that each of these issues have been settled by precedent and were without merit.

Following trial, the district court indeterminately committed appellant to MSOP as an SDP and SPP. The district court discharged appellant's trial attorney and ordered the appointment of a new attorney to represent appellant. Appellant's current attorney then filed a motion for a new trial on his behalf, arguing that (1) the district court erred in failing to discharge appellant's attorney pretrial, as appellant had requested; (2) appellant's previous attorney did not vigorously advocate on his behalf; (3) the district court erred in denying appellant the opportunity to develop a record that civil commitment is a punitive measure; (4) the district court erred by not allowing appellant to attend trial in street clothes; and (5) the district court's decision was not justified by evidence or was contrary to law. The district court found that appellant was allowed to raise his constitutional challenges, and later ruled against him. The district court also noted that appellant did not offer any argument as to why the commitment is not supported by the evidence or was contrary to law. The district court concluded that appellant's commitment is supported by clear-and-convincing evidence and is not contrary to law, and denied appellant's motion for a new trial. This pro se appeal follows.

D E C I S I O N

On appeal, appellant does not challenge the sufficiency of the evidence to civilly commit him. Rather, appellant argues that the district court erred in denying his motion for a new trial so that appellant could introduce evidence on the constitutionality of the

MCCA. Contrary to appellant's assertions, however, the district court allowed appellant to raise his constitutional challenges, and the district court ruled on those issues in its findings of fact, holding that the double jeopardy and ex post facto issues have been settled by the Minnesota Supreme Court and that an attack on the efficacy of MSOP is premature at the time of commitment. Appellant asserts that he is entitled to a new trial to allow him to present evidence that his commitment was unconstitutional because commitment as an SDP or an SPP under the MCCA is a punitive measure and not treatment. He argues that there is a growing controversy over whether civil commitment is retribution or deterrence, citing a 2011 Minnesota Legislative Auditor's Report on MSOP and a 2012 order from a court in England denying extradition of a person to Minnesota due to concerns about possible civil commitment as an SDP.

A defendant is entitled to a new trial if he was deprived of a fair trial based on an irregularity in the court proceedings or a court order or due to an abuse of discretion by the district court, if the jury awarded excessive damages due to passion or prejudice, if errors of law occurred at trial, or if the jury's verdict is not justified by the evidence or is contrary to law. Minn. R. Civ. P. 59.01. This court reviews a district court's denial of a motion for a new trial for an abuse of discretion. *Stoebe v. Merastar Ins. Co.*, 554 N.W.2d 733, 735 (Minn. 1996).

Here, the district court did not abuse its discretion in denying appellant's motion for a new trial. The Minnesota Supreme Court has already resolved the constitutional questions that appellant raises on appeal. It has held that civil commitment is remedial in nature, not punitive, because its goal is treatment, not preventative detention. *Call v.*

Gomez, 535 N.W.2d 312, 319-20 (Minn. 1995); *see also In re Blodgett*, 510 N.W.2d 910, 916 (Minn. 1994) ("But even when treatment is problematic, and it often is, the state's interest in the safety of others is no less legitimate and compelling. So long as civil commitment is programmed to provide treatment and periodic review, due process is provided.").

Appellant also appears to be arguing that MSOP treatment is ineffective. But "a person may not assert his right to treatment until he is actually deprived of that treatment." *In re Martenies*, 350 N.W.2d 470, 472 (Minn. App. 1984), *review denied* (Minn. Sept. 12, 1984). And "[g]enerally, the right to treatment issue is not reviewed on appeal from a commitment order." *In re Wicks*, 364 N.W.2d 844, 847 (Minn. App. 1985), *review denied* (Minn. May 31, 1985); *see also In re Civil Commitment of Navratil*, 799 N.W.2d 643, 651 (Minn. App. 2011) (holding that the "commitment process is not the proper avenue for asserting a right-to-treatment argument" because the "treatment of committed individuals is the province of the commissioner of human services, not the district court"), *review denied* (Minn. Aug. 24, 2011). This is unlike *In re Commitment of Lonergan*, 792 N.W.2d 473, 474-76, *rev'd in part and remanded*, 811 N.W.2d 635 (Minn. 2012), where appellant was indeterminately committed as an SDP and did not appeal the commitment order, but brought a motion under Minn. R. Civ. P. 60.02 a year after his commitment, arguing that MSOP failed to meet its treatment obligations. Here, appellant filed a direct appeal from his commitment order and there is no argument that he has actually been deprived of treatment.

Affirmed.