STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0339

Eugene Christopher Banks,
Appellant,

vs.

Lucinda Jesson,
Commissioner of Human Services,
Respondent.

Filed August 20, 2012
Affirmed
Ross, Judge

Dakota County District Court
File No. 19-P6-98-008535

David A. Jaehne, West St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, Barry R. Greller, Assistant Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Debra E. Schmidt, Assistant County Attorney, Donald E. Bruce, Assistant County Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Wright, Judge; and Collins, Judge.*

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

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

ROSS, Judge

Eugene Banks was committed to the Minnesota Sex Offender Program as a sexually dangerous person in 1998 following multiple sex abuse incidents against child victims. Banks challenged his commitment, requesting a discharge. The special review board recommended that Banks's petition be denied. The judicial appeal panel denied Banks's petition for rehearing. Banks appeals, arguing that sufficient evidence in the record supports his request for discharge. Because Banks has failed to meet his burden to establish a prima facie case for discharge, we affirm.

FACTS

Forty-year-old Eugene Banks has been committed to the Minnesota Sex Offender Program (MSOP) as a sexually dangerous person (SDP) since September 1998. Banks was first convicted of first-degree criminal sexual conduct in November 1987 after an eight-year history of sexually assaulting his younger sister by forcing her to have sex with him. Banks also forced his 5-year-old cousin to place his mouth on Banks's penis while the two were in the shower.

After undergoing sex offender treatment, in July 1991 Banks befriended a 12-year-old girl who babysat in the apartment complex where he lived. Banks gave the girl beer and followed her into the bathroom, where he unzipped her pants, placed his hand inside of her underwear, and touched her vagina.

A month after Banks assaulted the 12-year-old girl, he abducted a five-year-old girl from her apartment bedroom in the middle of the night. She was later found standing

outside of her apartment in her nightgown, covered in mud and holding her underpants in her hand. Her vaginal area was reddened. Banks was charged for the July and August assaults. He entered an agreement in which he pleaded guilty to second-degree criminal sexual conduct for assaulting the 12-year-old, and the charges associated with his kidnapping the 5-year-old were dismissed.

The state later petitioned the district court to commit Banks as a sexually dangerous person. The district court committed Banks indeterminately. Banks has unsuccessfully appealed his commitment to this court three times.

Banks's most recent petition requesting discharge resulted in the special review board recommending denial because Banks continues to be an untreated, violent sex offender who has done nothing to reduce his high risk of reoffending since he entered civil commitment. The judicial appeal panel reviewed the decision and denied Banks's request for a discharge, concluding that he failed to meet his burden of production to establish a prima facie case for discharge under Minnesota Statutes section 253B.19, subdivision 2(d) (2010).

Banks appeals the denial of his petition.

D E C I S I O N

Banks contends that sufficient evidence in the record supports his request for a provisional or complete discharge from the MSOP. Banks did not raise the issue of a provisional discharge before the judicial appeal panel or the special review board, a fact that he conceded at the hearing. This court will generally not consider matters not argued and considered by the court from which the appeal is being taken. *Thiele v. Stich*, 425

N.W.2d 580, 582 (Minn. 1988). We therefore address only Banks's argument for complete discharge.

When seeking a full discharge from civil commitment as a sexually dangerous person, the petitioner "bears the burden of going forward with the evidence." Minn. Stat. § 253B.19, subd. 2(d). To meet that burden, he must present "a prima facie case with competent evidence to show that [he] is entitled to the requested relief." *Id.* The burden is one of production and the petitioner "need not actually prove anything, but instead must only present evidence on each element sufficient to avoid judgment as a matter of law." *Coker v. Ludeman*, 775 N.W.2d 660, 665 (Minn. App. 2009); *see also Braylock v. Jesson*, ___ N.W.2d ___, 2012 WL 3192811 (Minn. Aug. 8, 2012) (reaffirming that the petitioner carries the burden of production). "If the petitioning party has met this burden, the party opposing discharge . . . bears the burden of proof by clear and convincing evidence that the discharge . . . should be denied." Minn. Stat. § 253B.19, subd. 2(d). We review de novo whether the judicial appeal panel properly dismissed a petition pursuant to rule 41.02(b) and whether it correctly applied the evidentiary burden for a full discharge. *See Paradise v. City of Minneapolis*, 297 N.W.2d 152, 155 (Minn. 1980); *Coker*, 775 N.W.2d at 663.

A person who is committed as a sexually dangerous person may be discharged only if

> it appears to the satisfaction of the judicial appeal panel, after a hearing and recommendation by a majority of the special review board, that the patient is capable of making an acceptable adjustment to open society, is no longer dangerous

> to the public, and is no longer in need of inpatient treatment and supervision.
>
> In determining whether a discharge shall be recommended, the special review board and judicial appeal panel shall consider whether specific conditions exist to provide a reasonable degree of protection to the public and to assist the patient in adjusting to the community. If the desired conditions do not exist, the discharge shall not be granted.

Minn. Stat. § 253B.185, subd. 18 (2010).

Banks asserts that he has met his prima facie burden of establishing that he is entitled to be discharged on three grounds: because his offenses occurred when he was young and he is too old to reoffend; because it has been 20 or 21 years since he last offended, and because he is not sexually dangerous. The argument is unpersuasive.

Banks has not met his burden to present a prima facie case for discharge because his stated bases do not constitute evidence that he can make an acceptable adjustment to open society, that he is no longer dangerous to the public, or that he is no longer in need of inpatient treatment and supervision. During his 13 years at the MSOP, Banks has never received sex-offender treatment, and he does not believe that he needs treatment. He frequently fails to follow the rules and policies at the MSOP. He acknowledged that he remains chemically dependant and that his detention in a secured facility and lack of funds is what is preventing him from chemical use. He has been diagnosed with pedophilia, paraphilia, antisocial personality disorder, and narcissistic personality disorder, and he has not suggested that age has any bearing on these conditions or pointed to evidence that being forty-years old by itself demonstrates that he is safe to society. That his pedophilic tendencies have been cured simply as a consequence of the passage

of time is a proposition he does not support with logic or science. While it is good he has not recently reoffended, that fact does not bear substantially on the questions that arise from his petition given that he has been confined in a highly supervised civil-commitment facility for the past 13 years and incarcerated before that; the same restrictive supervisory protections that have prevented him from using chemicals may have similarly been the essential factor in his not reoffending during this period. The judicial appeal panel did not err by denying Banks's petition for discharge.

Affirmed.