STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0421

In the Matter of the Civil Commitment of:
Michael David Anderson

Filed September 24, 2012
Affirmed
Wright, Judge

Hennepin County District Court
File No. 27-MH-PR-11-684

Michael C. Hager, Minneapolis, Minnesota (for appellant)

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

Considered and decided by Wright, Presiding Judge; Schellhas, Judge; and Larkin, Judge.

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

WRIGHT, Judge

In this appeal challenging his indeterminate civil commitment as a sexually dangerous person (SDP), appellant argues that the evidence is insufficient to support the district court's conclusion that he is an SDP. Appellant also challenges the SDP commitment statute, arguing that it is unconstitutional as applied to him because it

violates his constitutional rights to substantive due process, equal protection, and a jury trial, and his constitutional protection against double jeopardy. We affirm.

FACTS

Appellant Michael David Anderson's criminal history began in 1985 when he was 19 years old and pleaded guilty to first-degree criminal sexual conduct involving M.W., the four-year-old daughter of a neighbor. In a statement to the police, Anderson admitted that he made M.W. touch his penis and perform oral sex on him. During his presentence evaluation, Anderson explained that he was curious about sexual contact and chose M.W. because she was too young to understand "and would not be hurt by the experience." The evaluating agent observed that Anderson seemed "quite naïve and unempathetic as far as the consequences [to] the victim, but . . . has some guilt and remorse because he knew what he did was wrong." The district court sentenced Anderson to 43 months' imprisonment but stayed execution of the sentence and placed Anderson on 20 years' probation. The conditions of Anderson's probation required him to serve nine months' incarceration and successfully complete sex-offender treatment. Anderson entered the Seals and Associates (Seals) outpatient sex-offender treatment program, but he failed to complete it.

In January 1988, Anderson pleaded guilty to indecent exposure involving two young girls at a public library. Anderson received a sentence of 90 days' incarceration. He also was readmitted into the Seals sex-offender treatment program and placed in the "Exposers' Group." In the Seals program, Anderson admitted that he had been exposing himself since his early teens. The director of the Seals program reported to Anderson's

supervising agent that this exposing conduct preceded each act of abuse committed by Anderson and had "become an addiction." Anderson again failed to complete the Seals program. Because he had failed to remain law abiding or to complete sex-offender treatment, Anderson's probation was revoked in December 1988; and he was incarcerated at the Minnesota Correctional Facility at St. Cloud (MCF-SCL).

In August 1990, Anderson was released from MCF-SCL to the 180 Degrees halfway house. The conditions of his release included the satisfactory completion of the 180 Degrees sex-offender treatment program, having no contact with minor children, and abstaining from the use of mood-altering chemicals. Anderson was terminated from the 180 Degrees program in October 1990 because he failed to return one night and admitted that, during the first two months of his release from prison, he exposed himself to two young girls on separate occasions, consumed alcohol, and smoked marijuana. Anderson's supervised release was revoked based on these violations of the conditions of his release, and he was incarcerated at the Minnesota Correctional Facility at Lino Lakes (MCF-LL).

When Anderson's sentence expired in November 1991, he was released from prison. Fewer than six months later, Anderson approached a seven-year-old girl in the toy section of a department store. As Anderson lifted the girl to reach a doll from the top shelf, he rubbed her buttocks against his exposed penis. When he put the girl down, he asked her to hold his penis. She complied. Store security personnel detained Anderson, and he subsequently was charged with second-degree criminal sexual conduct. Anderson pleaded guilty and received a sentence of 36 months' imprisonment. During his

incarceration for this offense, Anderson participated in the assessment phase of the correctional facility's sex-offender treatment program. Anderson's therapist observed that Anderson demonstrated "*no* victim empathy" and seemed to take pride in having "well over 100" victims. Anderson quit the sex-offender treatment program after participating for fewer than two months. After approximately eight months in a general treatment unit, Anderson quit because of the "confrontational nature of the program." He was transferred to a different correctional facility, where he entered the Sex Offender Evaluation and Education Center (SEEC). Anderson completed the SEEC program approximately seven months later with a "poor" prognosis from his evaluators.

Anderson's sentence expired in April 1995. In November 1996, Anderson exposed his penis to a seven-year-old girl in a bookstore. As a result, he was charged with two counts of gross-misdemeanor indecent exposure. He pleaded guilty to one of the counts in May 1997 and received a sentence of one year of probation.

Anderson approached a ten-year-old girl, R.M.W., and her younger sister in a public library in June 1998. His penis was exposed when he asked R.M.W. to lick it. She touched Anderson's penis with the palm of her hand. Anderson later reported to investigators that he prefers girls between ages six and ten, and exposing himself is "like a high." But he is hesitant to do so unless he thinks he can get away with it. Anderson was charged with second-degree criminal sexual conduct, solicitation of a child, and indecent exposure for his conduct in June 1998. Anderson pleaded guilty to second-degree criminal sexual conduct, admitting that he exposed his penis to R.M.W., asked her to touch it, asked her to perform oral sex on him, and allowed her to touch his penis.

During his presentence investigation, Anderson explained that he chose young girls because "they did not yet know what sex was and did not feel ashamed." And he "derived a sense of control" because the girls are quite young. Finding that Anderson is a career offender and a danger to public safety, the district court imposed a sentence of 100 months' imprisonment.

While participating in chemical-dependency treatment, Anderson admitted that he has "no guilt or empathy for his victims." Rather, he wants to stop committing offenses only to avoid incarceration. Anderson entered a sex-offender treatment program while incarcerated in June 2002. On a sexual-history questionnaire, Anderson reported that, from approximately 1982 until 1997, he had exposed himself "in a public place 100 times to 100 different girls less than 14 years of age." He also reported that, from approximately 1981 to 1988, he engaged in "35 incidents of rubbing up against or touching 35 adult females (over 17) who were strangers to him." When the department of corrections reviewed Anderson in September 2003, it assigned him the highest risk level, finding that he posed "a greater than 70% risk of sexual reoffense over a six year period[.]"

In February 2004, six days before Anderson was scheduled for supervised release from prison, Anoka County filed a petition to commit Anderson as a sexual psychopathic personality (SPP) and an SDP. The district court appointed Dr. James Gilbertson to examine Anderson. After the examination, Dr. Gilbertson concluded that Anderson was highly likely to sexually reoffend. But Dr. Gilbertson was uncertain whether Anderson's offense history constituted a course of harmful sexual conduct. Dr. Gilbertson

recommended that, if Anderson were not civilly committed, he should be referred for sex-offender treatment at the Alpha Human Services Program (Alpha) in Minneapolis. Anoka County agreed to dismiss the commitment petition without prejudice to provide Anderson an opportunity to receive treatment, and Anderson was accepted into the residential program at Alpha.

Alpha required Anderson to complete victim disclosure forms for each of his victims. In these forms, Anderson identified 35 victims of his sexual conduct during the period between 1981 and 1998. He was prosecuted for offenses involving only three of these victims.[1] Anderson's conduct involving the other 32 victims, a majority of whom were minor girls, included touching and kissing victims on various parts of their bodies, touching their genitals with his hands and penis, making the victims touch his penis with their hands and mouths, masturbating while victims watched him, and ejaculating in or on the victims' bodies.

In July 2005, Anderson left the Alpha residential program and moved to Alpha's postresidential status. In May 2007, he was arrested and charged with violating the conditions of his supervised release from prison by failing to follow multiple rules of his sex-offender program and frequenting bars without the approval of his supervising agent. At the revocation hearing that followed, Anderson admitted each of the charged violations, and the district court placed him on electronic home confinement.

[1] Anderson also completed two forms disclosing sexual conduct relating to multiple victims. On one form, Anderson disclosed approximately 20 frottage victims between 1981 and 1988. On the other form, Anderson admitted exposing himself to 100 victims between 1981 and 1998.

Anderson returned to Alpha as a residential client in June 2007 and advanced to postresidential status in January 2008. In the summer of 2009, Anderson violated his supervised-release conditions by remaining in the vicinity of a group of children on a fishing dock in Minneapolis for approximately 15 minutes. He later explained that he did so because he was angry about his release conditions and wanted to be defiant. As he left the dock, he intentionally brushed his hand against the thigh of a girl in the group.

In January 2010, Alpha terminated Anderson's treatment for failing to comply with his treatment requirements. Anderson subsequently was charged with violating the conditions of his supervised release that required him to complete sex-offender treatment successfully, have no contact with minors, refrain from entering alcohol sales establishments without the approval of his supervising agent, and follow all instructions given by his supervising agent. Anderson's supervising agent reported concern that "[d]espite the years of sex offender treatment, Mr. Anderson has consistently returned to high risk behaviors and has made the conscious decision to live an isolated, secretive lifestyle that is very likely to lead to further victimizations." Following a revocation hearing, Anderson's supervised release was revoked. Anderson entered the Minnesota Correctional Facility at Rush City (MCF-RC) sex-offender treatment program in September 2010.

In July 2011, Hennepin County filed a petition seeking Anderson's civil commitment as an SPP and an SDP. Anderson moved to dismiss, arguing that the SPP and SDP commitment statutes are unconstitutional as applied to him because they violate his constitutional rights to due process and equal protection and his constitutional

protection against double jeopardy. Anderson also demanded a jury trial. The district court denied Anderson's motion.

The district court appointed two psychological examiners to evaluate Anderson and advise the district court: Dr. Andrea Lovett, who was selected by the district court, and Dr. Thomas Alberg, who was selected by Anderson. Both examiners concluded that Anderson satisfies the requirements for civil commitment as an SDP. Specifically, the examiners concluded that Anderson has engaged in a course of harmful sexual conduct; Anderson has manifested a sexual, personality, or other mental disorder or dysfunction;[2] Anderson's disorders do not permit him to control his sexual impulses adequately; and Anderson is "highly likely" to sexually reoffend if he is not civilly committed. Although Dr. Alberg also concluded that Anderson satisfies the requirements for civil commitment as an SPP, Dr. Lovett could not conclude with certainty that Anderson satisfied those requirements.

Following an evidentiary hearing, the district court made extensive findings of fact and concluded that Anderson satisfies the requirements for commitment as an SDP but not as an SPP. This appeal followed.

D E C I S I O N

I.

Anderson first argues that the evidence is insufficient to support the district court's conclusion that he satisfies the requirements for commitment as an SDP. We review the

[2] Each examiner independently diagnosed Anderson with pedophilia, exhibitionism, frotteurism, alcohol dependence, and a personality disorder.

district court's civil-commitment decision to determine whether the district court complied with the statutory prerequisites for civil commitment and whether the evidence supports the district court's findings. *In re Schaefer*, 498 N.W.2d 298, 300 (Minn. App. 1993). Whether there is sufficient evidence to satisfy the standard for civil commitment is a question of law, which we review de novo. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995); *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994) (*Linehan I*). But the district court's findings of fact will not be disturbed absent clear error. *In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995). We do not reweigh the evidence when reviewing the findings of fact. *In re Salkin*, 430 N.W.2d 13, 16 (Minn. App. 1988), *review denied* (Minn. Nov. 23, 1988). Rather, we view the record in the light most favorable to the district court's decision. *Knops*, 536 N.W.2d at 620.

Civil commitment as a "sexually dangerous person" requires proof by clear and convincing evidence that the subject of the commitment "(1) has 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(a) (2010); *see also* Minn. Stat. §§ 253B.02, subd. 17 (defining who is mentally ill and dangerous to public), 253B.18, subd. 1(a) (defining procedure and standard of proof for confinement) (2010). The petitioner need not prove an inability to control sexual impulses. Minn. Stat. § 253B.02, subd. 18c(b) (2010). Rather, a sexually dangerous person is subject to civil commitment if the disorder or dysfunction prevents adequate control over sexual impulses and makes it highly likely that the person will reoffend. *In re Linehan*, 594 N.W.2d 867, 876 (Minn.

1999) (*Linehan IV*), *cert. denied*, 528 U.S. 1049, 120 S. Ct. 587 (1999); *In re Civil Commitment of Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006), *review denied* (Minn. June 20, 2006).

Anderson asserts that he is not highly likely to reoffend and, therefore, does not meet the third element for commitment as an SDP.[3] The following six factors are used to determine whether an offender is highly likely to reoffend: (1) relevant demographic characteristics; (2) the offender's history of violent behavior, paying particular attention to the recency, severity, and frequency of violent acts; (3) base-rate statistics for violent behavior among individuals of the offender's background; (4) sources of stress in the environment; (5) the similarity of present or future contexts to past contexts in which violence was used; and (6) the offender's record with regard to sex-therapy programs. *Linehan I*, 518 N.W.2d at 614 (setting out factors as applied to SPP commitment); *see also In re Linehan*, 557 N.W.2d 171, 189 (Minn. 1996) (*Linehan III*) (applying same factors to SDP commitment), *vacated on other grounds*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand*, 594 N.W.2d 867 (Minn. 1999).

Anderson asserts that his advancing age suggests a lower likelihood that he will reoffend. Both examiners considered Anderson's age, and Dr. Alberg acknowledged that Anderson's age and education history reduce his likelihood of reoffending. But Dr. Alberg also identified demographic factors that increase Anderson's likelihood of reoffending. These include his gender and chemical dependency. Both examiners also

[3] Anderson does not challenge the sufficiency of the evidence to support the first two elements for commitment as an SDP.

identified Anderson's poor relationship history and unstable employment history as factors that increase Anderson's likelihood of reoffending. A robust body of demographic information supports the experts' determination that there is a high risk that Anderson will reoffend.

Anderson asserts that his offense history does not include violent behavior. But violent conduct is not required for the SDP determination. An SDP is a person who "has engaged in a course of *harmful* sexual conduct" and "is likely to engage in acts of *harmful* sexual conduct[.]" Minn. Stat. § 253B.02, subd. 18c(a) (emphasis added). The statutory definition of "harmful sexual conduct" is "sexual conduct that creates a substantial likelihood of serious physical *or emotional* harm to another." *Id.*, subd. 7a(a) (2010) (emphasis added). Violent conduct is not required. *In re Robb*, 622 N.W.2d 564, 573 (Minn. App. 2001), *review denied* (Minn. Apr. 17, 2001).

We know from the record that some of the victims of Anderson's offenses have undergone counseling and exhibited emotional damage, including emotional withdrawal, nightmares, insomnia, and fear that Anderson will attempt to repeat his sexual behavior with them. Anderson has five sexual-offense convictions and has admitted committing many more offenses. Anderson reported having more than 100 victims between 1981 and 1998. Most of them were minor girls, and 35 victims were subjected to Anderson's physical contact. This contact included touching victims' genitals with his hands and penis, rubbing his penis against various parts of victims' bodies, making victims touch his penis, and ejaculating in or on victims' bodies. Both examiners testified that this type of conduct is likely to cause serious emotional harm to minor victims. In addition, both

examiners testified that when Anderson touched the girl on the dock in 2009, he demonstrated compulsivity and a likelihood that he would have been unable to resist the urge to reoffend if other adults were not present. This record provides strong support for the district court's determination that there is a high risk that Anderson will reoffend.

Anderson next argues that the examiners did not consider the base-rate statistics for violent behavior among individuals who have completed sex-offender treatment and did not distinguish between more harmful conduct, such as physical-contact offenses, and less harmful conduct, such as noncontact exposure. This third *Linehan* factor involves the use of actuarial and similar methods for assessing risk. *See Linehan III*, 557 N.W.2d at 189. Here, both examiners used multiple actuarial instruments and concluded that base-rate statistics among individuals with Anderson's background indicate elevated recidivism rates. Both examiners also concluded that recidivism rates among sex offenders are understated because sexual assaults are underreported. Dr. Lovett testified that Anderson's offense history in particular demonstrates the substantial underreporting of sex offenses.

Although the examiners did not consider the base-rate statistics for individuals who have completed sex-offender treatment, Dr. Alberg testified that several factors made Anderson's risk of reoffending "much higher" than the average individual who has completed sex-offender treatment in prison. These factors include Anderson's history of chemical dependency, his previous violations of the conditions of probation and supervised release from prison, his substantial number of previous incidents of sexual misconduct, and evidence that he previously offended after he attended sex-offender

treatment. In addition, the head of the sex-offender treatment program at MCF-RC testified that Anderson's history of participating in seven to eight sex-offender treatment programs made him significantly different from the typical person who completes sex-offender treatment. And although the examiners' actuarial instruments did not distinguish between the severity of offenses, Dr. Lovett testified that, for Anderson, "often the exposure is simply a gateway to the more serious offenses" and that Anderson lacks the ability to self-regulate his conduct to avoid more serious offenses. On this record, the base-rate statistics reflect a high risk that Anderson will reoffend.

As to the sources of stress in Anderson's environment and the similarity of present or future contexts to past contexts, Anderson contends that he earns an adequate income, he is supported by family and friends, and the structures provided by the department of corrections have reduced the sources of stress in his environment. But both examiners reported that Anderson would be subject to substantial stress when released from prison and that Anderson has exhibited difficulty coping with stress in the past. Specifically, Dr. Alberg identified Anderson's history of coping with stress by drinking, which in the past has increased his risk of reoffending. The record also establishes that Anderson has a history of violating the conditions of probation and supervised release imposed on him. In June 2007, Anderson reported to Alpha that less than a year earlier he had obtained a passport and gambled at casinos in an effort to obtain money so that he could abscond from supervised release. As recently as summer 2009, Anderson reported touching a young girl's thigh on a fishing dock in Minneapolis. During that incident, Anderson defiantly remained on the dock for approximately 15 minutes after a group of children

had arrived because he was angry about being required to leave a location where children are present. Thus, the record includes ample evidence that the sources of stress in Anderson's environment and the similarity of past, present, and future contexts reflect a high risk that Anderson will reoffend.

As to the final *Linehan* factor—the offender's record with regard to sex-therapy programs—Anderson argues that he has completed significant sex-offender treatment and shown progress. He has participated in multiple sex-offender treatment programs, including residential programs, outpatient programs, and programs offered during his multiple periods of incarceration. But aside from his most recent participation in the sex-offender treatment program at MCF-RC, Anderson has sexually reoffended after or during each of his previous periods of treatment. And he has been terminated from or quit multiple treatment programs. The record demonstrates repeated violations during his periods of treatment that include visiting bars, using alcohol, obtaining an unapproved post office box, gambling, preparing to abscond, violating curfew, being untruthful to treatment-program staff, and committing sexual offenses. Dr. Lovett testified that Anderson is "treatment resistant" and "very adept at manipulating treatment providers." Both examiners concluded that Anderson's sex-offender treatment record is "poor." Thus, Anderson's record with regard to sex-offender treatment reflects a high risk that Anderson will reoffend.

In sum, the record provides substantial support for the district court's determination that Anderson is likely to engage in acts of harmful sexual conduct.

Accordingly, the district court's conclusion that Anderson satisfies the criteria for SDP commitment is both factually and legally sound.

II.

Anderson contends that the SDP commitment statute is unconstitutional as applied to him because it violates his constitutional rights to substantive due process, equal protection, and a jury trial, and his constitutional protection against double jeopardy. The constitutionality of the SDP commitment statute presents a question of law, which we review de novo. *Hamilton v. Comm'r of Pub. Safety*, 600 N.W.2d 720, 722 (Minn. 1999). Minnesota statutes are presumed constitutional. *Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 299 (Minn. 2000). Anderson, therefore, has the burden of demonstrating beyond a reasonable doubt the alleged constitutional violations. *See In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989). We address each of Anderson's constitutional arguments in turn.

A.

The United States Constitution and the Minnesota Constitution protect against government deprivation of "life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. Because the due-process protections of the United States Constitution and the Minnesota Constitution are coextensive, we review a due-process challenge using both federal and state precedent. *See Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988).

"[S]ubstantive due process protects individuals from 'certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement

them.'" *Linehan IV*, 594 N.W.2d at 872 (quoting *Zinermon v. Burch*, 494 U.S. 113, 125, 110 S. Ct. 975, 983 (1990)). If the challenged law implicates a fundamental right, we subject the law to strict scrutiny. *Id.*; *Essling v. Markman*, 335 N.W.2d 237, 239 (Minn. 1983). A law subject to strict scrutiny will be upheld if the state demonstrates that the law is necessary to serve a compelling state interest and that the law is narrowly tailored to serve that interest. *Linehan IV*, 594 N.W.2d at 872; *Essling*, 335 N.W.2d at 239.

Minnesota's SDP commitment statute is "the product of a delicate balancing between the legitimate public concern over the danger posed by predatory sex offenders and the fundamental right of those persons committed to live their lives free of physical restraint by the state." *Hince v. O'Keefe*, 632 N.W.2d 577, 580 (Minn. 2001) (quotation omitted). As such, when examining whether the SDP commitment statute violates substantive due process, we subject the statute to strict scrutiny and place the burden on the state to demonstrate that the SDP commitment statute is narrowly tailored to serve a compelling state interest. *Linehan IV*, 594 N.W.2d at 872. The Minnesota Supreme Court has held that if indeterminate commitment "is programmed to provide treatment and periodic review," the requirements of due process are satisfied. *In re Blodgett*, 510 N.W.2d 910, 916 (Minn. 1994) (rejecting constitutional challenge to SPP commitment statute); *see also Linehan IV*, 594 N.W.2d at 876 (rejecting constitutional challenge to SDP commitment statute). "States have a compelling interest in both protecting the public from sexual violence and rehabilitating the mentally ill." *Linehan IV*, 594 N.W.2d at 872. As the *Blodgett* court observed, "even when treatment is problematic, and it often

is, the state's interest in the safety of others is no less legitimate and compelling." 510 N.W.2d at 916.

Anderson asserts that the state does not have a compelling interest in confining him within the Minnesota Sex Offender Program (MSOP) because he has completed sex-offender treatment. Therefore, he argues, the SDP commitment statute is not narrowly tailored because it does not permit the district court to commit a person to a sex-offender treatment program that is less restrictive than confined participation in the MSOP. This argument is unavailing. Under the SDP commitment statute, the district court "shall commit the patient to a secure treatment facility *unless* the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient's treatment needs and the requirements of public safety." Minn. Stat. § 253B.185, subd. 1(d) (2010) (emphasis added). Although the district court may commit a person to a less-restrictive treatment program, "there is no requirement for commitment to the least restrictive alternative for persons determined to be sexually psychopathic personalities or sexually dangerous persons." *In re Senty-Haugen*, 583 N.W.2d 266, 269 (Minn. 1998). Individuals challenging a commitment petition "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." *In re Kindschy*, 634 N.W.2d 723, 731 (Minn. App. 2001), *review denied* (Minn. Dec. 19, 2001).

When the district court denied Anderson's motion to dismiss on substantive-due-process grounds, it explained that "the question of a less[] restrictive alternative will be explored upon [Anderson's] presenting such an alternative as per the requirements of the

statute." Following an evidentiary hearing, the district court found that "there is no disposition other than commitment to [the] MSOP that can adequately meet [Anderson's] treatment needs and, more particularly, the requirements of public safety." The district court acknowledged that an alternative, less-restrictive sex-offender treatment setting that also adequately protects the public hypothetically "could be created." But the district court found that neither Anderson nor the examiners had identified such an alternative that "is better able to meet [Anderson's] sex offender treatment needs, consistent with the requirements of public safety." The district court's findings are consistent with the opinions of both examiners and the record as a whole.

Anderson maintains that an appropriate alternative currently exists. But the alternative that Anderson identifies is the later, less-restrictive stage of the MSOP. This program offering is available to Anderson, but only after he has entered the MSOP and a judicial appeal panel determines that transfer to the less-restrictive stage of treatment is appropriate. This determination rests on, among other considerations, the need, if any, for security to accomplish continuing sex-offender treatment and which facility can best meet the patient's therapeutic needs. Minn. Stat. § 253B.185, subd. 11 (2010). That this less-restrictive stage of treatment exists is not contrary to the district court's findings. This stage of treatment simply is not an alternative that currently is suitable, and therefore available, to Anderson.

Accordingly, Anderson has not established that the SDP commitment statute violates his substantive-due-process rights.

B.

Anderson next argues that the SDP commitment statute violates his constitutional rights to equal protection, U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 2, because it requires the state to treat sex offenders differently from other criminal offenders. Both the United States Supreme Court and the Minnesota Supreme Court have rejected this argument in the context of indeterminate commitment for psychopathic personalities. *Minn. ex rel. Pearson v. Probate Court of Ramsey Cnty.*, 309 U.S. 270, 274-75, 60 S. Ct. 523, 526 (1940) (recognizing that "the legislature is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be clearest"); *Blodgett*, 510 N.W.2d at 916-17 ("Nor do we think the psychopathic personality statute violates equal protection under either the federal or state constitution. . . . [T]he argument ignores the fact that the sexual predator poses a danger that is unlike any other."). The Minnesota Supreme Court also has rejected an equal-protection challenge to the SDP commitment statute, holding that "the SDP Act's classification is sufficiently justified by *Blodgett* and the reasonable connection between a proposed patient's mental disorder and the state's interests in public protection and treatment." *Linehan III*, 557 N.W.2d at 187. Therefore, Anderson's equal-protection challenge fails.

C.

Anderson contends that he is entitled to a jury trial on whether he should be committed indeterminately. But the Minnesota Supreme Court has rejected the argument that a jury trial is required in an indeterminate-commitment proceeding. *State ex rel.*

Pearson v. Probate Court of Ramsey Cnty., 205 Minn. 545, 556-57, 287 N.W. 297, 303 (1939), *aff'd*, 309 U.S. 270, 60 S. Ct. 523 (1940); *accord Joelson v. O'Keefe*, 594 N.W.2d 905, 910 (Minn. App. 1999), *review denied* (Minn. July 28, 1999). Anderson asserts that, because some other jurisdictions grant a jury trial in an indeterminate-commitment proceeding, Minnesota should provide the same. This argument is without merit. *See Poole v. Goodno*, 335 F.3d 705, 710 (8th Cir. 2003) ("[T]he Minnesota state court decision declining to grant a jury trial in [a commitment] case is not contrary to, or an unreasonable application of, clearly established federal law as determined by the Supreme Court"). Thus, Anderson is not entitled to relief on this ground.

D.

Anderson argues that the SDP commitment statute violates the constitutional protection against double jeopardy. *See* U.S. Const. amend. V; Minn. Const. art. I, § 7. The Minnesota Supreme Court has repeatedly held that indeterminate civil commitment is a remedial, not a punitive, course of action. *See Blodgett*, 510 N.W.2d at 916. Consequently, the Minnesota Supreme Court has rejected the claim that the SDP commitment statute violates the constitutional protection against double jeopardy. *Linehan IV*, 594 N.W.2d at 871-72 (citing *Kansas v. Hendricks*, 521 U.S. 346, 361-69, 117 S. Ct. 2072, 2081-86 (1997)). Accordingly, Anderson's double-jeopardy challenge also fails.

Affirmed.