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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0106**

In the Matter of the Civil Commitment of:
Eliseo Efrain Padron a/k/a Little Efrain Contreras

**Filed July 15, 2013
Affirmed
Peterson, Judge**

Ramsey County District Court
File No. 62-MN-PR-11-519

John Choi, Ramsey County Attorney, Beth Gessner Sullivan, Assistant County Attorney, Human Services Division, St. Paul, Minnesota (for respondent Ramsey County)

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Considered and decided by Peterson, Presiding Judge; Chutich, Judge; and Smith, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from his indeterminate commitment as a sexual psychopathic personality and a sexually dangerous person, appellant argues that the evidence is insufficient to demonstrate that he utterly lacks the power to control his sexual impulses or that he is highly likely to engage in harmful sexual conduct. We affirm.

FACTS

On October 6, 2011, Ramsey County filed a petition to civilly commit appellant Elisio Efrain Padron, a/k/a Little Efrain Contreras, as a sexual psychopathic personality (SPP) and a sexually dangerous person (SDP). When the petition was filed, appellant was nearing the end of his sentence for first-degree criminal sexual conduct. Because of violations, appellant served his supervised-release and conditional-release time in prison.

Appellant has an extensive history of juvenile offenses, including theft, burglary, assault, second-degree assault, and aggravated robbery. At the age of seventeen, appellant was certified as an adult and pleaded guilty to third-degree criminal sexual conduct, following the violent rape of his second cousin. Appellant was sentenced to 48 months in prison. Eight months after his release in September 1995, appellant committed a second violent rape. Appellant vaginally, anally, and digitally penetrated R.T., a stranger to him who was dating his friend. He also forced his friend to sexually assault R.T.; he threatened to kill her and her young child. After six hours of brutal assault, appellant permitted his friend to take R.T. home. Appellant was charged with and pleaded guilty to first-degree criminal sexual conduct. Appellant was sentenced to 100 months, a downward durational departure.

In 2002, appellant was released under intensive supervised probation; he violated probation on four occasions and was returned to prison each time. After the fourth violation, appellant was deemed unamenable to probation and a continuing risk to the public. Appellant was required to serve time in prison until his sentence expired, which was calculated to occur on February 11, 2012. Between his prison admit date of July 3,

1996, and the filing of this petition, appellant spent only 29 days unsupervised in the community. While in prison for both the first and second rapes, appellant was disciplined at least 34 times for violating prison rules.

Appellant also has a “significant history of drug abuse,” beginning at age 10 and continuing during his imprisonment. Appellant completed drug-treatment programs twice while in prison, but he also was disciplined for using drugs both while in prison and while on supervised release. Appellant believes that alcohol and drugs played a significant part in his two sexual offenses and his other crimes. Appellant participated in sex-offender treatment three or four times while in prison, but he never successfully completed a program. Appellant was terminated from the programs for violating program rules, including possession of tattoo paraphernalia, possession of pornography, and drug use.

Three experts testified at appellant’s commitment trial: Dr. Peter Meyers reviewed appellant’s file on behalf of the county to determine whether appellant should be referred for civil commitment; Dr. Mary Kenning was the first examiner; and Dr. Thomas Alberg was chosen by appellant to be the second examiner. All three experts agreed that appellant met the criteria to be considered a clinical psychopath. The experts administered a variety of actuarial and non-actuarial assessments. All three experts agreed that appellant was highly likely to reoffend with a violent crime. Kenning concluded that appellant was highly likely to reoffend sexually; Meyers administered the Sexual Violence Risk-20 assessment tool, which also indicated that appellant was likely to reoffend sexually, but Meyers attributed this to gang culture and drug and alcohol use.

Both Meyers and Alberg concluded that appellant did not meet the criteria for commitment as either an SPP or an SDP, while Kenning concluded that he did. The district court rejected Meyers' and Alberg's opinions, explaining that Alberg and Meyers uncritically accepted appellant's "version of the facts even though [appellant's] record is replete with deceitfulness and lies." The district court found Kenning's opinion more credible and persuasive than the other examiners' opinions due to her "knowledge of the facts, her painstaking review of the record and her results on the Static-99."

The district court fully reviewed appellant's credibility, noting many instances of falsehoods that were relied on by Alberg and Meyers. The following is a short summary of appellant's false statements that were accepted by Alberg and Meyers in reaching their expert opinions: (1) appellant reported that the death of his mother from cancer, her illness, and the inheritance she left had a great impact on him; he also testified at the commitment hearing about her death; in fact, a county investigator spoke with appellant's mother, who was still alive on the day of the commitment hearing; (2) appellant reported that he had earned a bachelor's degree, a master's degree in literature, and a certificate in ministry while incarcerated; in fact, appellant earned his G.E.D.; (3) appellant testified about his federal counterfeiting conviction; there is no record in the federal judicial system of charges against appellant; (4) appellant claimed that some of his behavior stemmed from a traumatic brain injury he suffered that left him in a coma for ten days; there are no medical records of such an injury despite the fact that appellant was under juvenile court jurisdiction at the time he claims the injury occurred; (5) appellant's versions of the two rapes changed significantly over the years; the district court noted that

he “did not provide a clear gang motivation for the offense until he knew he was at risk for civil commitment and was motivated to provide a non-sexual reason for his behavior”; (6) to show that he had a stable relationship, appellant claimed that he was married to C. S. and lived with her for two or three years; the marriage would have occurred while appellant was in prison, and there is no record of a marriage; appellant was in prison during the years he claimed to have lived with C.S. Alberg and Meyers accepted appellant’s version of all these facts, while Kenning was able to document discrepancies by reviewing records that were not based solely on appellant’s own report.

After carefully reviewing the record, the district court concluded that appellant met the criteria for indeterminate commitment as an SPP and an SDP.

D E C I S I O N

The district court’s civil-commitment decision must be supported by clear and convincing evidence; we will not set aside findings unless they are clearly erroneous. *In re Civil Commitment of Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006), *review denied* (Minn. Jun. 20, 2006). We review whether the facts satisfy the standards for civil commitment as a question of law. *Id.*

Appellant was indeterminately committed as both an SPP and an SDP. An SPP is a person who “has evidenced, by a habitual course of misconduct in sexual matters, an utter lack of power to control [his] sexual impulses . . . so that . . . it is likely the person will attack or otherwise inflict injury, loss, pain, or other evil on the objects of [his] uncontrolled and uncontrollable desire.” *In re Preston*, 629 N.W.2d 104, 110 (Minn. App. 2001) (quotation omitted); Minn. Stat. § 253B.02, subd. 18b (2010). An SDP is a

person 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) as a result, is [highly]¹ likely to engage in acts of harmful sexual conduct.” Minn. Stat. § 253B.02, subd. 18c (2010).

I.

Appellant argues that the evidence does not support the district court’s conclusion that he is utterly unable to control his sexual impulses, one of the necessary elements for civil commitment as an SPP. To determine whether a person is utterly unable to control sexual impulses, the district court considers the *Blodgett* factors:

the nature and frequency of the sexual assaults, the degree of violence involved, the relationship (or lack thereof) between the offender and the victims, the offender’s attitude and mood, the offender’s medical and family history, the results of psychological and psychiatric testing and evaluation, and such other factors that bear on the predatory sex impulse and the lack of power to control it.

In re Blodgett, 510 N.W.2d 910, 915 (Minn. 1994). The district court’s findings on the relevant factors can be summarized as follows:

Nature and frequency of sexual assaults

Appellant has only two convictions, but both were “brutal” offenses. Since the first offense in 1992, appellant has been in custody or on supervised release; he has spent only 29 days in the community without supervision. The second sexual assault occurred

¹ Under case law, the state must show that a person is “highly likely” to engage in future harmful sexual conduct. *In re Linehan*, 557 N.W.2d 171, 180 (Minn. 1996) (*Linehan III*), *vacated and remanded*, 522 U.S. 1011 (1997), *aff’d as modified*, 594 N.W.2d 867 (Minn. 1999).

over a period of six hours and involved multiple penetrations; at the time, appellant was on supervised release. When appellant was 15, two female cousins alleged that he had assaulted them, but this report was not investigated. In treatment, appellant admitted to group sex activities and other forced sexual activities, but these incidents were not charged or investigated.

Degree of violence

Both examiners agreed that appellant's sexual assaults were violent and included threats to kill the victims and the second victim's child. Both victims were physically harmed.

Relationship

Appellant's first victim was a female cousin; his second victim was a relative stranger whom he had met that evening when she attended a party with appellant's friend.

Attitude and mood

Kenning noted that appellant had a sense of superiority and entitlement and a feeling that rules did not apply to him. Alberg noted that appellant is volatile and apt to become angry and violent.

Medical and family history

The family dysfunction is well-documented as is appellant's chemical dependency. Kenning noted appellant's need to dominate and frighten others.

Testing

All three experts agreed that appellant is a psychopath. Meyers and Kenning scored appellant in the range of highly likely to sexually reoffend on the Static-99R;

Alberg did not, although the record reflects some scoring errors on Alberg's part. The other test results generally showed that appellant had a high risk of recidivism, but Alberg felt he would recidivate with a violent offense rather than a sexual offense.

Other factors (including Pirkl, Irwin, and Bieganowski factors)

Appellant was discharged three times from sex-offender treatment; appellant does not have a relapse plan; appellant's offenses involved drugs and alcohol, and he has continued to use drugs and alcohol while in prison; appellant has continued to flout prison rules despite consequences imposed; appellant shows little remorse or empathy for his victims; and appellant was twice disciplined for possessing pornography while undergoing sex-offender treatment. Appellant would be totally off supervision if released because he has served his supervised-release and conditional-release time; the second offense occurred while he was on supervised release. *See In re Pirkl*, 531 N.W.2d 902, 907 (Minn. App. 1995), *review denied* (Minn. Aug. 30, 1995); *In re Irwin*, 529 N.W.2d 366, 375 (Minn. App. 1995), *review denied* (Minn. May 16, 1995); *In re Bieganowski*, 520 N.W.2d 525, 529-30 (Minn. App. 1994), *review denied* (Minn. Oct. 27, 1994). Based on these facts, the district court's conclusion that appellant meets the standard of an utter lack of power to control his sexual impulses is not erroneous.

II.

Appellant contends that the district court erred by concluding that he is highly likely to engage in harmful sexual conduct, the third statutory element necessary for commitment as an SDP. In *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994) (*Linehan I*), the supreme court set forth several factors to use in predicting whether a person is a

serious danger to the public for purposes of commitment as an SPP. In *Linehan III*, the supreme court affirmed the use of these same factors to determine whether a person is highly likely to engage in harmful sexual conduct for purposes of an SDP commitment. The factors are: (1) demographic characteristics; (2) history of violent behavior; (3) statistical analysis; (4) sources of stress; (5) similarity of present or future context to former context; and (6) history of treatment. 557 N.W.2d at 178; *Linehan I*, 518 N.W.2d at 614. The district court's analysis of these factors can be summarized as follows:

Demographic characteristics

Although appellant is now 38, he is a chemically dependent male, without a good educational history and no stable work history. Alberg stated that he has a "relatively good educational history," but Alberg gave appellant credit for college courses that he had not taken.

History of violent behavior

Appellant has a long history of violent behavior, including pistol-whipping a 12-year old and stabbing a teenager when appellant was a juvenile. His relationship with C.S. was marked by domestic abuse. Both rape convictions involved violent behavior. He was never charged for another assault that occurred when he was a juvenile that left the victim in a coma. Shortly before the first rape, appellant broke his brother's jaw.

Statistical analysis

The general agreement among the experts is that appellant is highly likely to recidivate; Kenning felt that it would be sexual violence and Alberg and Meyers predicted violent, but non-sexual, crime. Alberg and Meyers felt that appellant's sexual

assaults were motivated by gang pressure and chemical dependency, but their conclusions were based on inaccurate information provided by appellant.

Stress

Appellant is a Level III Sex Offender, which complicates his housing and employment prospects. He would no longer be under court supervision, so certain support systems would not be provided, including chemical-dependency and sex-offender treatment. He has virtually no work history and no strong family support. Alberg opined that he would return to alcohol and drug use to alleviate stress; but his criminal-sexual-conduct convictions arose out of alcohol and drug use.

Context

Appellant was using drugs and alcohol when he committed both sexual assaults. Although appellant claims sobriety, he continued to use drugs and alcohol while incarcerated. Appellant committed the second assault while on supervised release from the first assault. The record shows appellant to be deceitful and manipulative and that he has a high sense of entitlement and a poor attitude toward women; there is no indication that this part of appellant's character has changed.

Treatment programs

Appellant has not completed a sex-offender treatment program, although he did complete a psychosexual-education course. He reoffended shortly after completing that course.

The district court's findings are well-supported in the record. The district court clearly explained why it rejected Alberg's and Meyers's conclusions that appellant did

not meet the criteria for commitment as an SPP and an SDP. *See In re Matter of Knops*, 536 N.W.2d 616, 620 (Minn. 1995) (stating that due regard is given to district court's credibility determinations; when findings of fact rest almost entirely on expert testimony, district court's evaluation of credibility is significant). The district court's conclusion that appellant meets the requirements for commitment as an SDP is not erroneous.

Affirmed.