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STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0251

In the Matter of the Civil Commitment of:
Philip Samuel Goldhammer

Filed August 5, 2008
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. 27-MH-PR-06-549

Ron Thorsett, 7328 Ontario Boulevard, Eden Prairie, MN 55346 (for appellant)

Michael O. Freeman, Hennepin County Attorney, Carolyn A. Peterson, Assistant County Attorney, C-2000 Government Center, 300 South 6th Street, Minneapolis, MN 55487 (for respondent state)

Considered and decided by Halbrooks, Presiding Judge; Willis, Judge; and Johnson, Judge.

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

HALBROOKS, Judge

Appellant challenges the district court's order committing him as a sexual psychopathic personality (SPP) and a sexually dangerous person (SDP). He argues that the district court lacked sufficient evidence to support its findings that he is (1) utterly incapable of controlling his sexual impulses and therefore does not qualify as an SPP and (2) unable to adequately control his sexual impulses and therefore does not qualify as an

SDP. Because we conclude that clear and convincing evidence supports the district court's determinations, we affirm.

FACTS

Appellant Philip Goldhammer was born on February 25, 1976. He left high school before graduating but subsequently obtained his GED. Appellant identifies himself as homosexual and has a youthful appearance for his age.

In the summer of 1999, when appellant was 23, he met 13-year-old R.E. through the Internet. Appellant told R.E. that he was 16 years old. The two met at the Burnsville mall on three occasions. Each time they met, they walked to appellant's home and engaged in reciprocal masturbation and oral sex. Appellant and R.E. ceased contact when R.E.'s mother discovered Internet correspondence between them. But it was not until November 2000 that R.E. learned appellant's true age.

In October of 1999, 15-year-old A.D. posted an advertisement on a website for gay persons. Appellant contacted him. In November 1999, A.D.'s parents drove A.D. to a mall to meet appellant and then brought A.D. and appellant back to A.D.'s home for an evening together. Appellant told A.D. and A.D.'s parents that he was 17 years old. That evening, appellant and A.D. engaged in masturbation. On a number of subsequent occasions, appellant and A.D. engaged in various forms of sexual contact, generally involving masturbation and oral sex. Appellant sometimes bound A.D. in the course of their sexual activity.

At the beginning of their relationship, appellant and A.D. agreed that they would not immediately engage in anal intercourse. But on December 14, 1999, the two argued

about anal intercourse while lying in bed. Appellant then flipped A.D. on his back, held his hands over A.D.'s wrists, and penetrated him anally. Appellant subsequently anally penetrated A.D. on at least two other occasions. A.D. testified that none of the incidents of anal intercourse was consensual and that he felt that he was unable to resist. Over time, appellant became possessive and controlling of A.D. When A.D. did not want to engage in sexual activity with appellant, appellant would argue with him until he relented. Once, during an argument, appellant slapped A.D. A.D. terminated the relationship approximately two months later.

Approximately one year after A.D. terminated his relationship with appellant, A.D. learned appellant's real age and told his parents. A.D.'s father confronted appellant and threatened to go to the police unless appellant sought counseling. After appellant began counseling, his therapist reported his behavior to the Dakota County child protection agency, which triggered an investigation by Officer Troy Peek of the St. Louis Park Police Department. Officer Peek took A.D.'s statement and obtained a search warrant of appellant's home. He confiscated appellant's personal computer and found pictures of pre- to post-pubescent males depicted in sexual situations and other pornographic material. In July 2001, after learning of A.D.'s similar circumstances, R.E. reported his sexual contact with appellant.

Appellant was charged with one count of third-degree criminal sexual conduct in Hennepin County for his contact with A.D. He was also charged in Dakota County with one count of third-degree criminal sexual conduct for his contact with R.E. and with possession of pictorial representations of minors. Before entering a plea, appellant was

interviewed by Carole Mannheim, Ph.D., LP, of Hennepin County Psychological Services. Based on the results of appellant's psychological tests, Dr. Mannheim determined that he was an "immature, self-indulgent, and impulsive young man, who refuses to accept responsibility for his problems, and may rebel against authority figures." She stated that while appellant may be superficially charming, when challenged, he is likely to respond with "unpredictable behaviors including explosive anger, depression, anxiety, withdrawal, addictive behaviors, sexual excesses or other forms of irresponsible acting out." According to Dr. Mannheim, appellant's sense of victimization made it unlikely that he would benefit from sex-offender-treatment programming; but she nevertheless recommended treatment following his jail term.

Appellant pleaded guilty to fourth-degree criminal sexual conduct in the Hennepin County case and possession of pictorial representations of minors in the Dakota County case. Appellant was sentenced to 18 months in Hennepin County and 23 months in Dakota County, with five-year stays of execution on both sentences; placed on probation; and ordered to serve 120 days in jail. In Hennepin County, his probation conditions included that he write a letter of apology to A.D., that he have no unsupervised contact with juveniles, and that he not participate in Internet chat rooms or use pornography. In Dakota County, appellant's probation conditions were similar, and he was ordered to participate in sex-offender treatment.

In March 2002, A.D.'s father learned that appellant might again be attempting to meet underage males online and gave this information to Officer Peek. Officer Peek located appellant's profile on Yahoo! and, posing as a 15-year-old boy, contacted

appellant. They engaged in several conversations over the Internet in July and August 2002, and Officer Peek monitored appellant's Internet activity for approximately two months. In so doing, he learned that appellant was using his computer at work to engage in the conversations. Officer Peek obtained a search warrant for that computer, and, based on the e-mail messages, appellant was arrested for soliciting a minor. In those exchanges, appellant made plans to meet Officer Peek at the mall. A request was made to revoke appellant's Hennepin County probation on the basis of these contacts, but the request was later withdrawn because of difficulties identifying appellant as a participant in the conversations.

In October 2002, appellant's employer contacted Officer Peek with concerns about appellant's Internet use. Appellant's use constituted 41%-66% of the total Internet use of the ten-person company from July 18 to September 24, 2002. When the supervisor obtained a list of the websites visited by employees, it included sites with pictures of naked young men and a pornographic story about a person with a foot fetish. In addition, appellant's supervisor told Officer Peek that when appellant was 30 minutes late to work one morning, he arrived with a male who appeared to be very young. Officer Peek listened to a voicemail on appellant's telephone from a person named "Ryan." Officer Peek interviewed Ryan, who stated that he was a minor who had met appellant at a coffee house.

In January 2003, A.D. and his father informed Officer Peek that appellant was once again active on the Internet with a message that he wanted to meet juvenile males. Officer Peek found that appellant had multiple profiles on various websites, including a

site directed at individuals under the age of 25. On those sites, appellant claimed that he was 17 or 19 years old. Officer Peek again searched appellant's personal computer and discovered pictures of partially clothed young boys along with names and telephone numbers. Officer Peek was able to speak with one male under 18 who had contact with appellant and determined that many of the others were underage as well. A search of appellant's work computer produced similar results.

On April 16, 2003, appellant was charged in Anoka County with counts of solicitation of a child to engage in sexual conduct, attempted solicitation of a child to engage in sexual conduct, and possession of pictorial representations of minors. During his investigation, Officer Peek learned that appellant met C.S. at a birthday party for A.D. in December 2000. C.S. was then 14 years old, and he suffered from Asperger's syndrome. Appellant told C.S. that he was 19 years old (he was then 24) and that C.S. should not tell anyone about their contact until C.S. was 16. The party began at a restaurant. At some point, appellant attempted to lure C.S. into a stairwell. Later, at A.D.'s house, C.S. and appellant engaged in sexual activity. On another occasion, the two went to the Mall of America. While there, appellant and C.S. entered a handicapped-accessible bathroom stall, and appellant trapped C.S. against a wall. But C.S. was able to break away from appellant. On two other occasions, the two engaged in oral sex at C.S.'s home. C.S later testified that he felt a great deal of psychological pressure from appellant and that he would not have become involved with him if he had known that appellant was actually 24. C.S. learned appellant's true age after they stopped seeing each other. C.S. subsequently began treatment for depression.

In May 2004, appellant entered an *Alford* plea to the Anoka County charge of attempted solicitation of a child. He was again placed on probation and ordered to complete sex-offender treatment, to have no contact with minors, and instructed not to possess any computer or Internet services without prior approval of the Department of Corrections (DOC).

In January and February 2005, Officer Peek learned that appellant might be on the Internet again, posing as a 19-year-old. Officer Peek, posing as a 15-year-old male, contacted appellant on the Internet; they engaged in "cybersex" and made plans to meet at the Mall of America. Appellant, concerned that he was being set up, failed to appear. But appellant's continued probation violations resulted in revocation of his probation on December 15, 2005. Appellant admitted using the Internet after he was confronted by his therapist. The district court executed his sentence on December 15, 2005.

On January 31, 2006, appellant was interviewed to determine whether he met the criteria for commitment as a sexual psychopathic personality (SPP) or a sexually dangerous person (SDP). During the interview, appellant denied many of the offenses and downplayed his role in others. After a subsequent hearing, the end-of-confinement review committee (ECRC) unanimously voted to assign to him a risk-level three based on concerns about appellant's predatory behavior, deviant orientation, and high-risk grooming behavior.

While incarcerated, appellant, then 30 years old, began a correspondence with a 20-year-old inmate, J.R. Appellant initially told J.R. that he was 21 and, later, 25. Prison staff confiscated documents that appellant and J.R. exchanged that included stories about

coerced sexual activity with minor males. For example, appellant wrote one sexually explicit story involving the sexual assault of an 11-year-old boy. Appellant made comments regarding the arousal that he received from stimulating minor males. Also amongst the documents were pictures of young boys clipped out of newspapers and magazines.

On May 30, 2006, the community-notifications supervisor of the DOC petitioned to commit appellant as an SPP and an SDP. The district court appointed James Alsdurf, Ph.D., and Harry Hoberman, Ph.D., to examine appellant, and subsequently conducted a six-day commitment hearing.

Based on the evidence at trial and after considering appellant's history and the opinions of Drs. Alsdurf and Hoberman, the district court concluded that clear and convincing evidence supports appellant's commitment as an SPP and an SDP. The district court ordered an interim commitment of appellant, subject to review under Minn. Stat. § 253B.18, subds. 2, 3 (2006). After a 60-day review hearing, the district court ordered appellant to be indeterminately committed as both an SPP and an SDP. This appeal follows.

D E C I S I O N

The district court may civilly commit a person who is mentally ill and dangerous to the public under the Minnesota Commitment and Treatment Act if the state proves the need for commitment by clear and convincing evidence. Minn. Stat. § 253B.18, subd. 1(a) (2006). Findings of fact by the district court will not be reversed unless clearly erroneous. Minn. R. Civ. P. 52.01; *In re Joelson*, 385 N.W.2d 810, 811 (Minn. 1986).

Due regard must be given to the opportunity of the district court to judge the credibility of the witnesses. Minn. R. Civ. P. 52.01; *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). "Where the findings of fact rest almost entirely on expert testimony, the [district] court's evaluation of credibility is of particular significance." *Id.* This court will not reweigh the evidence. *In re Linehan* (*Linehan III*), 557 N.W.2d 171, 189 (Minn. 1996), *vacated on other grounds*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand*, 594 N.W.2d 867 (Minn. 1999). But "[w]e review de novo whether there is clear and convincing evidence in the record to support the district court's conclusion that appellant meets the standards for commitment." *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

I.

Appellant contends that the district court erred in concluding that clear and convincing evidence supports the determination that he is an SPP. An SPP is defined as

> the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters, if the person has evidenced, by a habitual course of misconduct in sexual matters, an utter lack of power to control the person's sexual impulses and, as a result, is dangerous to other persons.

Minn. Stat. § 253B.02, subd. 18b (2006). The statute requires that the district court find (1) a habitual course of misconduct in sexual matters; (2) an utter lack of power to control sexual impulses; and (3) dangerousness. *Id.*; *see also In re Linehan (Linehan I)*, 518 N.W.2d 609, 613 (Minn. 1994) (stating that the sexual-psychopathic-personality statute

requires a showing of these three factors). "While excluding 'mere sexual promiscuity,' and 'other forms of sexual delinquency,' a psychopathic personality 'is an identifiable and documentable violent sexually deviant condition or disorder.'" *In re Preston*, 629 N.W.2d 104, 110 (Minn. App. 2001) (quoting *In re Blodgett*, 510 N.W.2d 910, 915 (Minn. 1994)). Appellant does not dispute that the first factor (a habitual course of misconduct in sexual matters) has been met, but he challenges the district court's determinations that he lacks the power to control his sexual impulses and that he is dangerous.

A. Utter Lack of Control

To determine whether an individual exhibits an utter lack of control over his sexual behavior, we review the following factors: (1) the nature and frequency of the sexual assaults; (2) the degree of violence involved; (3) the relationship (or lack thereof) between the offender and the victims; (4) the offender's attitude and mood; (5) the offender's medical and family history; (6) the results of psychological and psychiatric testing and evaluation; and (7) such other factors that bear on the predatory sexual impulse and the lack of power to control it. *Blodgett*, 510 N.W.2d at 915. We may also consider the offender's refusal of treatment opportunities, the lack of a relapse-prevention plan, *In re Pirkl*, 531 N.W.2d 902, 907 (Minn. App. 1995), *review denied* (Minn. Aug. 30, 1995), the presence of "grooming" behavior, and the failure of the offender to remove himself from similar situations. *In re Bieganowski*, 520 N.W.2d 525, 530 (Minn. App. 1994), *review denied* (Minn. Oct. 27, 1994).

The record in this case shows that appellant committed a series of sexual assaults and solicitation beginning in 1999 and continuing even after he was incarcerated in 2005. Appellant succeeded by manipulating young males into believing that they were in a relationship with him. Because appellant was able to deceive his victims, his actions were typically nonviolent. But appellant's sexual acts with A.D. regularly involved bondage, and appellant continued to state that bondage of young males was a sexual stimulant for him after he entered prison. On at least one occasion, appellant anally penetrated A.D. with force. Thereafter he subjected A.D. to nonconsensual anal intercourse on multiple occasions. He also slapped A.D. during an argument. A.D. testified that he often felt coerced by appellant.

The record is replete with examples of appellant's denial and/or minimization of his actions and their impact on his victims. He continually blamed A.D., A.D.'s father, and Officer Peek for the criminal charges against him. Numerous professionals who treated or interviewed appellant noted his professed lack of responsibility for his problems. Dr. Mannheim considered appellant unlikely to benefit from sex-offender treatment. His therapist, Pat Buschmann, noted that appellant has a persistent "victim stance" and was unable to appreciate the maturity difference between himself and A.D. In the discharge summary, Buschmann wrote that appellant's approach to treatment was "one of apparent cooperation while at the same time minimizing his offense behavior."

Drs. Alsdurf and Hoberman reached similar conclusions. Dr. Alsdurf described appellant as "verbose and manipulative, demonstrating a 'narcissistic woundedness' in his interpretation of events." Dr. Hoberman stated that appellant has a sense of

entitlement; a lack of empathy; and an arrogant, haughty style. Both Drs. Alsdurf and Hoberman questioned appellant's ability to benefit from treatment. Both found him impulsive and lacking in good judgment.

Of additional relevance is appellant's inability to cease engaging in sexually inappropriate grooming behaviors. *See Bieganowski*, 520 N.W.2d at 530 (relying on certain grooming behaviors that preceded inappropriate sexual conduct in upholding the district court's conclusion the evidence supported commitment). In its order, the district court provided an excellent summary of these behaviors:

> Both examiners determined, and this Court finds, that as a result of his mental, personality, and sexual dysfunctions, . . . [appellant] has an utter lack of power to control his sexual impulses . . . . All three victims testified that [appellant] misrepresented his age as part of grooming them, reflecting a calculated effort to evade detection, not, as he claims, an innocent mistake. The material retrieved from his computer in 2001, his online chats in 2003 and 2005, and his correspondence with J.R. demonstrate his continuing Hebephiliac and/or Pedophiliac interest in male[] children and adolescents. Moreover, the fact that he persisted in such activity, despite the potential consequences, and hid his activity from treatment professionals, also demonstrates his utter lack of power over his sexual impulses. Drs. Hoberman and Alsdurf stated that [appellant] had exhibited an inability and/or unwillingness to resist the impulse to sexually act out once a potential victim had been identified. They also noted that his lack of remorse and denial of his sexual misconduct contributed to his lack of control.

B. Dangerousness

Appellant also argues that his actions lacked the "dangerousness" necessary to support civil commitment, relying on *In re Rickmyer*, 519 N.W.2d 188 (Minn. 1994), and this court's decision in *In re Robb*, 622 N.W.2d 564 (Minn. App. 2001), *review denied*

(Minn. Apr. 17, 2001). In particular, appellant cites the *Robb* court's holding that "behavior that makes a person 'dangerous to other persons' as required by the [SPP] statute is limited to violent sexual assaults that create a substantial likelihood of serious physical or mental harm being inflicted on the person's victims." *Robb*, 622 N.W.2d at 571. Appellant contends that he lacks a history of violence and, therefore, cannot be committed as an SPP.

But at least one subsequent decision of this court has noted that the fact that a perpetrator does not cause actual physical injury collateral to sexual assaults, does not mean that the assaults are necessarily "non-violent within the meaning of the sexual psychopathic personality statute," as perpetrators will "only engage[ ] in the amount of force necessary to accomplish [their] will on very young victims." *Preston,* 629 N.W.2d at 113 (holding that "collateral physical force" used to restrain victims, combined with coercion, is sufficient to support a finding that sexual misconduct is violent in nature). The *Preston* court stated that "[i]t would be absurd to hold that because less force was needed to subdue an extremely young victim, the assault was non-violent." *Id*. The *Preston* court noted that "[t]he supreme court has not suggested that the question is whether the violence was greater than that involved in other sexual assaults that involve some physical force, but whether it was violent to the point of creating 'a substantial likelihood of serious physical or mental harm.'" *Id*. (quoting *Rickmyer*, 519 N.W.2d at 190) (other quotation omitted).

The record establishes that appellant's actions caused emotional damage to his victims. A.D.'s grades suffered as a result of the sexual assaults, and he "became sad and

withdrawn, fearful of relationships, and secretly obtained an AIDS test." R.E. suffered from depression and stated that it "took me years to feel not dirty" and that appellant "took away a huge portion" of his life. He has been hospitalized for psychiatric reasons. After discovering appellant's true age, C.S. became severely depressed and more wary of others. Moreover, contrary to his assertions, appellant did use force to effectuate his assaults. His assaults included bondage, he struck A.D., he trapped C.S. in a bathroom stall, and he held A.D. down on a bed and forcefully penetrated him anally. A.D. described two subsequent instances of nonconsensual anal penetration as well. These acts constitute violence that caused physical and emotional harm.

II.

Appellant also challenges his conviction as an SDP. An SDP is a person who "(1) has engaged in a course of harmful sexual conduct as defined in subdivision 7a; (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 as defined in subdivision 7a." Minn. Stat. § 253B.02, subd. 18c(a) (2006). For an SDP commitment, the state is not required to prove an utter inability to control sexual impulses but must show that the person has an existing disorder or dysfunction that results in inadequate impulse control, making it highly likely that the person will reoffend. *Id.*, subd. 18c(b) (stating that inability to control impulses is not required); *In re Linehan (Linehan IV)*, 594 N.W.2d 867, 876 (Minn. 1999) (stating that a high likelihood of recidivism is required). Appellant contends that clear and convincing evidence does not support the district court's finding that he has a mental disorder that makes him unable to adequately control

his sexual impulses and that he is therefore highly likely to reoffend; the experts who evaluated appellant reached the opposite conclusion.

Both court-appointed psychologists interviewed appellant multiple times. Both reached the ultimate conclusion that appellant satisfies the criteria for commitment as an SPP and an SDP.

Dr. Alsdurf diagnosed appellant as follows: rule out pedophilia; paraphilia NOS; sexual abuse of a child; depression NOS; attention-deficit-hyperactivity disorder; and personality disorder NOS with histrionic and narcissistic features. Dr. Alsdurf performed psychological personality testing, using the Millon Clinical Multiaxial Inventory-III (MCMI-III), an objective measure of personality functioning. Appellant's profile evidenced denial, evasiveness, and lack of introspection. The test results suggested that appellant would not seek treatment. On the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), appellant's profile was similar. Appellant was described as a high risk-taking, immature individual who presents himself as conventional and non-assertive.

On the Psychopathic Checklist-Revised, 2d Edition (PCL-R), which measures the "extent to which a given individual is judged to match the 'prototypical psychopath,'" appellant scored +28, a score very near the range of scores used by researchers to identify someone as a psychopath. Appellant's Factor I score on the PCL-R, which measures narcissism, was 15, a score that places him at the 99th percentile of male forensic patients and suggests that appellant has a very high likelihood of continuing to exploit others.

Dr. Alsdurf concluded that "[w]hen viewed in the context of his sexual deviance, one would expect that [appellant] would be nearly impervious to change."

Dr. Alsdurf also used risk-assessment tools to predict appellant's likelihood of recidivism. Using appellant's characteristics in conjunction with the "base rate" for sex offenders, Dr. Alsdurf concluded that appellant's likelihood of re-offending is high. On the STATIC-99, a recidivism prediction test with "good predictive ability," appellant scored a +7. He scored +6 on the test administered by Dr. Hoberman. Both scores put appellant in a high-risk category for recidivism. Finally, on the Sexual Violence Risk -20 (SVR-20), a test that considers 20 variables associated with sexual recidivism, appellant scored positive on 12 of 19 variables, with one "possible." Dr. Alsdurf concluded that because appellant scores as both a borderline psychopath and a sexual deviant, there are strong predictors of recidivism.

Dr. Hoberman diagnosed appellant with paraphilia; pedophilia; hebephilia; fetishism; and a personality disorder NOS or mixed personality disorder with antisocial, narcissistic, and histrionic traits. Dr. Hoberman interpreted appellant's Minnesota Sex Offender Screening Tool-Revised (MnSOST-R) score to project that appellant had "at least a 57% likelihood of being re-arrested for a new sexual offense" in the six years following his release from incarceration. He scored appellant a +10, corresponding with a "moderate to moderately high" likelihood of re-offense. Dr. Hoberman also considered the Sex Offender Risk Appraisal Guide (SORAG). This test predicted that appellant has a 76% probability of re-offending violently in the next seven years and a 58% probability in the next ten years. Dr. Hoberman also utilized the SVR-20 and found that appellant

scored positively on 14 of the 20 categories. Dr. Hoberman therefore concluded that appellant is characterized by a high likelihood of sexual recidivism.

Dr. Hoberman found that appellant "continues to present a danger to others in terms of future sexual offenses . . . if he does not receive intensive, long term general mental health and further specific sex offender treatment." He questioned appellant's motivation or ability to change his deviant behavior and whether sex-offender treatment could help bring about that change.

The district court made extensive factual findings based on the opinions of the two psychologists; the testimony of A.D., R.E., C.S., Officer Peek, appellant's aunt and cousin, an investigator, and appellant; and the other evidence at the hearing. In summary, the district court stated:

> Both examiners determined, and this Court finds, that as a result of his mental, personality, and sexual dysfunctions, and the aforementioned conditions, [appellant] has an utter lack of power to control his sexual impulses, as defined by [Minn. Stat.] § 253B.02, subd. 18c, and, as provided by the Sexually Dangerous Persons Act, has serious difficulty in controlling his sexual impulses. His personality disorder(s), coupled with his Paraphilias, resulted in his failure to refrain from continued Internet predation. All three victims testified that [appellant] misrepresented his age as part of grooming them, reflecting a calculated effort to evade detection, not, as he claims, an innocent mistake. The material retrieved from his computer in 2001, his online chats in 2003 and 2005, and his correspondence with J.R. demonstrate his continuing Hebephiliac and/or Pedophiliac interest in males[,] children and adolescents. Moreover, the fact that he persisted in such activity, despite the potential consequences, and hid his activity from treatment professionals, also demonstrates his utter lack of power over his sexual impulses. Drs. Hoberman and Alsdurf stated that [appellant] had exhibited an inability and/or unwillingness to resist the impulse to sexually act out

> once a potential victim had been identified. They also noted that his lack of remorse and denial of his sexual misconduct contributed to his lack of control.

Because the record contains clear and convincing evidence to conclude that appellant meets the criteria for commitment as an SPP and an SDP, we affirm the district court.

Affirmed.