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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1634**

Paulos, f/k/a Paul M. Lindberg,
Appellant,

vs.

Cal R. Ludeman, Commissioner of Human Services,
Respondent.

**Filed March 1, 2011
Affirmed
Hudson, Judge**

Hennepin County District Court
File No. 27-P9-96-060333

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

Lori Swanson, Attorney General, Barbara Berg Windels, Assistant Attorney General,
St. Paul, Minnesota (for respondent Commissioner of Human Services)

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

Considered and decided by Schellhas, Presiding Judge; Hudson, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Appellant challenges the judicial appeal panel's order denying his petition for provisional or full discharge from civil commitment as a sexually dangerous person.

Appellant argues that he has produced sufficient evidence to meet the statutory requirements for provisional or full discharge pursuant to Minn. Stat. § 253B.185, subs. 12, 18 (2010). Because the judicial appeal panel properly determined that appellant failed to establish a prima facie case for provisional or full discharge, we affirm.

FACTS

In 1986, appellant Paulos, f/k/a Paul Lindberg, was convicted of second-degree murder for strangling a woman to death after a sexual encounter. *State v. Lindberg*, 408 N.W.2d 589, 591–92 (Minn. App. 1987). After killing the woman, Paulos put a cigarette lighter in her rectum and her keys in her vagina. *Id.* at 591. He spray painted her body green, wrapped her body in a rug, placed her body in his car, drove to a parking lot, and dumped her body beneath two trailers parked in the lot. *Id.* at 590–91. He then called a local television station to report the location of the body. *Id.* Paulos appealed his conviction, and this court affirmed. *Id.* at 594.

In 1996, a petition was filed to commit Paulos as a sexually dangerous person. While incarcerated, Paulos provided several different versions of the sexual encounter that occurred before the murder. *In re Lindberg*, No. CX-97-855, 1997 WL 600584, at *1 (Minn. App. Sept. 30, 1997), *review denied* (Minn. Nov. 25, 1997). “These ranged from stating the victim initially did not consent, that he ‘pushed’ the issue of sex but it got out of hand, that he attempted to rape her, and that he raped her.” *Id.* Paulos also admitted to harming his former wife, typically after she refused his various sexual demands. *Id.* During the commitment trial, evidence was introduced that Paulos tried to

strangle and rape his former wife approximately three weeks before the murder. *Id.* The district court initially committed Paulos as a sexually dangerous person (SDP) to the Minnesota Sex Offender Program (MSOP) on January 10, 1997, and indeterminately committed him on July 18, 1997. Paulos appealed. This court affirmed.¹ *Id.* at *4.

On July 27, 2009, Paulos petitioned respondent commissioner of the Minnesota Department of Human Services for full or provisional discharge from civil commitment. The special review board (SRB) made findings and recommended denial of appellant's petition. Paulos filed a petition for rehearing and reconsideration before the judicial appeal panel.

On August 6, 2010, a hearing was held before the judicial appeal panel. Paulos testified that he participated in sex-offender treatment at MSOP and completed a large portion of the program before it was changed and he was required to start over. Paulos is currently in Phase 1 of the program, but he claims the requirements for advancement are unclear. Paulos testified that, if discharged, he would live in his female cousin's trailer, although he was unsure if she still lived there. Paulos also testified that his cousin's son, who is a police officer, would take him to the doctor for medical appointments or for psychological services. Paulos stated that he is willing to attend sex-offender treatment if released, but he did not specify where.

Thomas Alberg, an independent court-appointed examiner and licensed psychologist, submitted a report and testified at the hearing. In Alberg's opinion, Paulos

¹ Paulos was also initially committed as a mentally ill and dangerous person, but this court reversed. *Id.* at *4.

should not be discharged. Alberg testified that Paulos has participated in sex-offender treatment and completed a large part of an older version of the treatment program, but Paulos has not completed the current program and is only in Phase 1. Alberg testified that, while in treatment, Paulos has had numerous behavioral problems cooperating with staff and participating in groups and has engaged in inappropriate sexual behavior. According to Alberg, Paulos continues to need inpatient treatment and supervision.

Alberg also testified that Paulos would have problems adjusting to open society if discharged. Alberg agreed with MSOP's diagnosis that appellant suffers from sexual sadism, sexual masochism, depressive disorder not otherwise specified, anxiety disorder not otherwise specified, posttraumatic stress disorder (chronic), alcohol abuse, cannabis abuse, borderline personality disorder, and antisocial personality disorder. Although Alberg stated that he did not think Paulos was highly likely to reoffend if he was monitored and supervised, Alberg stated that most of the factors that were present when he was committed as a sexually dangerous person still exist. Paulos's actuarial scores remain high, and he has not completed sex-offender treatment, both of which Alberg identified as significant risk factors for recidivism. Furthermore, Alberg testified that Paulos does not have an approved relapse-prevention plan and that he was unable to articulate a clear and specific provisional discharge plan to protect the public. According to Alberg, the only factors indicating a decreased risk of recidivism are that Paulos is no longer using chemicals, he has matured due to age, and his health issues might diminish his ability to overpower someone.

At the conclusion of appellant's case, the commissioner moved to dismiss under Minn. R. Civ. P. 41.02(b). The judicial appeal panel concluded that appellant had failed to present sufficient evidence to establish a prima facie case for full or provisional discharge, granted the commissioner's motion, and denied appellant's petition. This appeal follows.

D E C I S I O N

On a petition for full or provisional discharge, the petitioner has the burden of going forward with the evidence. Minn. Stat. § 253B.19, subd. 2(d) (2010).² To meet the burden of production, the petitioner must present “a prima facie case with competent evidence to show that the person is entitled to the requested relief.” *Id.* “If the petitioning party has met this burden, the party opposing discharge or provisional discharge bears the burden of proof by clear and convincing evidence that the discharge or provisional discharge should be denied.” *Id.*

A person committed as an SDP 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

² The judicial appeal panel applied the 2008 version of Minn. Stat. § 253B.19, subd. 2(d). In 2010, the legislature amended this provision to codify our interpretation of prior versions of the statute. 2010 Minn. Laws ch. 300, § 27, at 764; *see also Coker v. Ludeman*, 775 N.W.2d 660, 665 (Minn. App. 2009) (clarifying that only after petitioner meets his burden of production does the burden shift to the opposing party to prove the continuing need for commitment by clear and convincing evidence); *Caprice v. Gomez*, 552 N.W.2d 753, 758 (Minn. App. 1996) (explaining that to meet his burden of production, a petitioner must present competent evidence from which a factfinder could determine that petitioner is ready for discharge). Because the substantive burden of proof has not changed, we apply the current version of the statute.

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. A provisional discharge may be granted only if

it appears to the satisfaction of the judicial appeal panel, after a hearing and a recommendation by a majority of the special review board, that the patient is capable of making an acceptable adjustment to open society.

The following factors are to be considered in determining whether a provisional discharge shall be recommended:

(1) whether the patient's course of treatment and present mental status indicate there is no longer a need for treatment and supervision in the patient's current treatment setting; and

(2) whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the patient to adjust successfully to the community.

Minn. Stat. § 253B.185, subd. 12.³

³ The judicial appeal panel applied Minn. Stat. § 253B.18, subs. 7, 15 (2008), which previously governed the discharge and provisional discharge of persons who are mentally ill and dangerous and SDPs. *See* Minn. Stat. § 253B.185, subd. 1 (2008) (stating that “unless otherwise provided in this section,” the provisions of the chapter governing a civil commitment generally will apply to a commitment involving an SDP); *Caprice*, 552 N.W.2d at 756–57 (stating that a person seeking discharge from commitment as an SDP must follow the procedures applicable to discharge from commitment as mentally ill and dangerous). In 2010, the legislature amended the civil commitment statute so that the relevant language from Minn. Stat. § 253B.18, subs. 7 and 15, has also been

The judicial appeal panel concluded that Paulos failed to produce “any sworn competent evidence to meet his initial burden of production to avoid judgment as a matter of law.” The judicial appeal panel denied Paulos’s petition for full discharge because “he is not capable of making an acceptable adjustment to open society[,] . . . he continues to be dangerous to the public[,] and . . . he continues to need inpatient treatment and supervision.” The judicial appeal panel denied Paulos’s petition for provisional discharge because “he is not capable of making an acceptable adjustment to open society.” The appeal panel concluded that “his course of hospitalization and present mental status indicate [a continued need] for treatment and supervision,” and “the conditions of any provisional discharge plan would not provide a reasonable degree of protection to the public.” Appellant argues that the evidence as a whole does not support the denial of his petition for full or provisional discharge.

We will reverse a decision of the judicial appeal panel only if it is clearly erroneous. *Jarvis v. Levine*, 364 N.W.2d 473, 474 (Minn. App. 1985). In reviewing a decision of the judicial appeal panel, we must determine from an examination of the record whether the evidence as a whole sustains the panel’s findings. *Piotter v. Steffen*, 490 N.W.2d 915, 919 (Minn. App. 1992), *review denied* (Minn. Nov. 17, 1992). “[I]t is immaterial that the record might also provide a reasonable basis for inferences and

incorporated into Minn. Stat. § 253B.185, which specifically governs SDPs. Minn. Stat. § 253B.185, subds., 12, 18; 2010 Minn. Laws ch. 300, § 26, at 761–63. Because the substantive standards for discharge and provisional discharge of SDPs have not changed, we apply the current statute.

findings to the contrary.” *Id.* (quoting *Johnson v. Noot*, 323 N.W.2d 724, 728 (Minn. 1982)).

At the evidentiary hearing, the panel heard testimony from two witnesses and considered twenty exhibits. Based on the evidence, the appeal panel’s decision is not clearly erroneous. Paulos is currently diagnosed with sexual sadism, sexual masochism, depressive disorder not otherwise specified, anxiety disorder not otherwise specified, posttraumatic stress disorder (chronic), alcohol abuse, cannabis abuse, borderline personality disorder, and antisocial personality disorder. Paulos also suffers from a high degree of psychopathy. Paulos contends that he is not dangerous to the community and points to Alberg’s testimony that, “if [Paulos is] monitored and supervised, I don’t think he’s highly likely to reoffend, no.” But his actuarial scores indicate that he is currently at a high risk for sexual recidivism, and he has not completed sex-offender treatment.

Alberg also testified that, based on Paulos’s problems during treatment, Paulos would have problems adjusting to open society if discharged. Paulos offered a release plan under which he would live in his cousin’s trailer and he would be escorted to the doctor by his cousin’s son. Paulos also stated that he would be willing to participate in sex-offender treatment if discharged. But Paulos did not indicate where he would attend sex-offender treatment in the community. In Alberg’s opinion, Paulos did not present a specific and well-articulated provisional discharge plan that would protect the public. Nor does Paulos have an approved relapse-prevention plan.

Furthermore, Alberg stated that Paulos continues to need inpatient treatment and supervision. Specifically, Alberg expressed concern that during his commitment, Paulos

has had numerous behavioral problems and has exhibited inappropriate sexual behavior. Alberg also testified that Paulos has been placed in protective isolation based on his behavior. *See* Minn. R. 9515.3090, subp. 4 (2009) (defining protective isolation).

Overall, the evidence is sufficient to support the appeal panel's conclusion that Paulos is dangerous to the public and continues to need inpatient treatment and supervision. The record also supports the appeal panel's conclusion that Paulos would have problems adjusting to society if discharged. Therefore, the judicial appeal panel's conclusion that appellant failed to meet his burden to establish a prima facie case for full or provisional discharge is not clearly erroneous.

Affirmed.