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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1971**

In the Matter of the Civil Commitment of:
Steven Allan Housman

**Filed April 6, 2010
Affirmed
Stauber, Judge**

Chippewa County District Court
File Nos. 12PR081104; 12K794000356

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Considered and decided by Stoneburner, Presiding Judge; Stauber, Judge; and
Randall, Judge.*

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from his civil commitment as a sexually dangerous person (SDP) and
sexual psychopathic personality (SPP), appellant argues that (1) the evidence was
insufficient to meet the clear-and-convincing standard of proof to commit him as an SDP

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

and SPP and (2) civil commitment, under Minn. Stat. § 253B.02, subds. 18b, 18c (2008), violates constitutional prohibitions against double jeopardy. We affirm.

FACTS

In April 1983, when appellant Steven Housman was 29 years old, he sexually abused his girlfriend's seven-year-old daughter K. While appellant was intoxicated, he digitally penetrated K., took a nude photograph of her, and made K. masturbate him until he ejaculated. Appellant's son, J.H., was present and witnessed the sexual abuse. Appellant was charged with first-degree criminal sexual conduct and subsequently entered an *Alford* plea to an amended charge of fourth-degree intrafamilial sexual abuse.

In 1993, appellant's four-year-old daughter, S.H., reported that she had been sexually abused multiple times by appellant and J.H. S.H. reported that appellant digitally penetrated her vagina, penetrated her vagina and anus with his penis, and performed oral sex on her. Appellant's three-year-old daughter, K.H., also reported multiple incidents of sexual abuse by her father. K.H. reported that appellant had fondled and digitally penetrated her vagina, digitally penetrated her anus, and put his tongue on her buttocks. Cornerhouse staff, who conducted interviews with S.H. and K.H., also believed that appellant had penile contact with K.H.'s vagina.

On December 21, 1994, appellant was charged with two counts of first-degree criminal sexual conduct related to S.H. and one count of second-degree criminal sexual conduct related to K.H. Appellant subsequently underwent a psychological evaluation, during which he denied any sexual misconduct with his daughters. As part of the psychological evaluation, appellant participated in a polygraph examination. Results of the

polygraph indicated that appellant attempted deception when discussing the allegations of abuse.

Appellant pleaded guilty to an amended count of second-degree criminal sexual conduct, based on S.H. being less than 13 years of age and appellant being more than 36 months older than S.H. Pursuant to the terms of the plea agreement, the other charges were dismissed. At the time of the plea, appellant admitted that he touched S.H. inappropriately. But at the sentencing hearing, appellant stated that he was innocent and that he took the plea agreement because he was facing 40 years in prison. The district court responded by telling appellant that his plea could not be accepted. After a recess, appellant again admitted to the sexual contact with S.H. The district court subsequently sentenced appellant to 58 months in prison, but stayed execution of that sentence and placed appellant on probation for 25 years. Appellant was also required to participate in and successfully complete an outpatient sex-offender-treatment program, and to have no contact with S.H., K.H., or other juveniles.

In October 1995, Woodland Centers outpatient sex-offender-treatment program evaluated appellant regarding his suitability for outpatient sex-offender treatment. During the evaluation, appellant denied responsibility for his sexual misconduct and stated that he perjured himself to take advantage of his plea agreement. The evaluating psychologist noted that appellant lacked empathy and that he showed little concern about how his son's sexual abuse of S.H. and K.H. affected them. The psychologist concluded that appellant was inappropriate for sex-offender treatment and that without treatment, his prognosis was poor to refrain from future sex offending.

In November 1995, appellant's probation agent filed a violation report after Woodland Centers found appellant inappropriate for outpatient sex-offender treatment. Consequently, the district court revoked appellant's stayed sentence and executed his 58-month prison sentence. While in prison, appellant continued to deny his offense and stated that he was not interested in participating in treatment.

In June 1998, a Minnesota Department of Corrections (DOC) psychologist completed a Sex Offender Risk Assessment Report on appellant for the end-of-confinement review committee (ECRC). The psychologist noted that appellant lacked control over his sexual behavior and recommended that the ECRC assign appellant a risk level of two. The psychologist further noted that the elements of appellant's offense behavior demonstrate potential sadistic characteristics and impulsivity; his offense behavior indicates an utter lack of control; his choice of victims includes a very large potential pool (he could easily find a single mother who would allow access to her children without knowledge of his pedophilia); he appeared to lack remorse; and he displayed deviant orientation or thought processes and probable pedophilia diagnosis.

Appellant was released from prison in December 1998. While in outpatient treatment in 1999, appellant alluded to sexual arousal and contact with 14, 15, and 16-year-old girls while he was living in Germany many years prior. Appellant also continued to deny that he sexually abused S.H. and K.H. During the 1999 treatment, appellant participated in another polygraph examination, and the results indicated that appellant was being deceptive about the sexual contact with his daughters. After appellant failed the polygraph, he was terminated from sex-offender treatment. Appellant's release agent

subsequently filed a violation report stating that appellant had failed to complete sex-offender treatment as directed.

In December 1999, appellant's release was revoked, and appellant was ordered to return to prison for 120 days. Although appellant was released from prison again in April 2000, he was not able to enter treatment due to his denial of the offenses. A psychosexual assessment of appellant was subsequently completed to determine sex-offender-treatment options. During the interviews, appellant made spiritual references, recited specific biblical quotations, and stated that his responses were as "directed by God." Based on the results of the tests and interviews, the assessor found appellant to be a high risk to reoffend and recommended that the DOC return appellant to prison for the remainder of his sentence or until he completed inpatient sex-offender treatment.

Appellant's release from prison was again revoked in September 2000, and appellant was ordered to return to prison for two years to complete sex-offender treatment. When he returned to prison, appellant maintained his innocence and refused treatment. Appellant was subsequently released from prison in September 2002 and entered outpatient sex-offender treatment in February 2003. Throughout treatment, appellant denied sexually abusing his daughters and worked on assignments related to his 1983 offense. Reviews of appellant's progress between February 2002 and February 2004 indicate that appellant had made limited progress in treatment.

On April 23, 2004, a concerned citizen contacted appellant's probation agent to inform him that appellant was in a relationship with a woman who had two minor daughters, ages four and six. The agent spoke with the woman, who said that she was

aware that appellant could have no contact with minors without permission. The woman stated that appellant had not had contact with her daughters and described appellant as a good Christian man who was nice to her and who had stated that the charges brought against him were not true. When confronted about his relationship with the woman, appellant admitted giving the woman candy for her children and bringing one of the girl's bicycles to his home to fix.

In May 2004, appellant was given an ultimatum. He would have to admit that he committed the 1993 charged offenses or his treatment would be terminated. Appellant again refused to admit to the offenses, and appellant's sex-offender treatment was terminated for failure to progress. Appellant was subsequently arrested and returned to prison in July 2004. Upon his readmission to prison, appellant refused to be interviewed for the admission assessment and twice refused to participate in a psychological evaluation. The second time, appellant told the psychologist not to return for another interview. Shortly thereafter, appellant's case was forwarded to the Chippewa County Attorney for civil-commitment review.

By 2008, appellant had still not entered sex-offender treatment. Consequently, respondent Chippewa County filed a petition on December 30, 2008, seeking to commit appellant as an SDP and SPP. Pursuant to the commitment statute, the district court appointed psychologist Dr. Linda Marshall as the first examiner. Appellant refused to meet with Dr. Marshall and did not request that the district court appoint a second examiner.

At the civil-commitment trial, Dr. Marshall opined that appellant has engaged in a habitual course of harmful sexual conduct, has sexual, personality, and other mental

disorders, is highly likely to reoffend sexually, and is dangerous. Dr. Marshall also opined that appellant has the mental conditions required for SPP commitment and that he has an utter lack of power to control his sexual impulses. Thus, Dr. Marshall stated that she supported commitment of appellant as both an SDP and SPP.

On July 30, 2009, the district court ordered that appellant be committed to the Minnesota Sex Offender Program (MSOP) as an SDP and SPP. Following appellant's initial commitment, MSOP submitted a treatment report as required by Minn. Stat. § 253B.18, subd. 2 (2008). The report noted that appellant needs intensive inpatient sex-offender treatment programming and recommended appellant's continued commitment to MSOP. A review hearing was subsequently conducted, and following the hearing, the district court made appellant's commitment indeterminate by an order dated October 14, 2009. This appeal followed.

D E C I S I O N

I.

Appellant argues that the evidence is insufficient to support the district court's conclusions that he satisfies the requirements for commitment as an SDP and SPP. This court reviews 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). On appeal from a commitment order, the reviewing court defers to the district court's findings of fact and will not reverse those findings unless they are clearly erroneous. *In re Commitment of Ramey*, 648 N.W.2d 260, 269 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002).

But whether the evidence is sufficient to meet the statutory requirements for commitment is a question of law. *In re Commitment of Martin*, 661 N.W.2d 632, 638 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003).

A. SDP commitment

A person may be committed as an SDP under the Minnesota Commitment and Treatment Act if the petitioner proves that the person meets the criteria for commitment by clear and convincing evidence. Minn. Stat. §§ 253B.18, subd. 1(a), .185, subd. 1 (2008). An SDP is one 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) “is likely to engage in acts of harmful sexual conduct.” Minn. Stat. § 253B.02, subd. 18c(a). It is not necessary for the petitioner to prove that the person to be committed has an inability to control his sexual impulses. *Id.*, subd. 18c(b). But the statute requires a showing that the person’s disorder “does not allow [him] to adequately control [his] sexual impulses.” *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*).

1. Course of harmful sexual conduct

“Harmful sexual conduct” is “sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another.” Minn. Stat. § 253B.02, subd. 7a (2008). The statute does not explicitly require convictions and has been consistently interpreted as allowing consideration of all harmful sexual conduct or behavior, not just criminal convictions. *See Ramey*, 648 N.W.2d at 268 (concluding “that the course of conduct need not consist solely of convictions but may also include conduct amounting to harmful sexual conduct [for] which the offender was not convicted”).

Appellant argues that the state failed to prove that he engaged in a course of harmful sexual conduct because the state offered no proof of harm to his victims. We disagree. The record reflects that appellant has two convictions for sexual offenses and three victims. The abuse included digital penetration of the vagina and anus, as well as oral sex. The record reflects that when S.H. reported the abuse, she stated that the conduct made her feel “sad” and “mad.” Accordingly, there is sufficient evidence to support the conclusion that appellant engaged in a course of harmful sexual conduct.

2. Adequate control

The second prong of the SDP determination requires a district court to find that the person suffers from a mental abnormality or personality disorder that does not allow him to adequately control his sexual impulses. *Linehan IV*, 594 N.W.2d at 876. Here, Dr. Marshall diagnosed appellant with pedophilia, attracted to females, non-exclusive type, paraphilia; alcohol dependence, in remission in a controlled environment; polysubstance abuse, in remission in a controlled environment; history of major depressive disorder; and antisocial personality disorder. Dr. Marshall opined that as a result of these disorders, appellant lacks the ability to adequately control his harmful sexual behavior. Dr. Marshall further noted that appellant’s deviant sexual arousal and antisocial personality are a “dynamic duo” because offenders who have both deviant sexual arousal and antisocial personality features are at a higher risk to reoffend sexually. The district court found Dr. Marshall’s testimony to be persuasive. *See Ramey*, 648 N.W.2d at 269 (stating that appellate courts defer to the district court’s evaluation of witness credibility). Therefore, clear and convincing evidence supports the second prong of the SDP statute.

3. Likelihood of reoffense

The third factor in assessing a candidate for classification as an SDP is whether, as a result of the offender's course of misconduct and mental disorders or dysfunctions, the offender "is likely to engage in acts of harmful sexual conduct." Minn. Stat. § 253B.02, subd. 18c(a)(3). The supreme court has construed the statutory phrase "likely to engage in acts of harmful sexual conduct" to require a showing that the offender is "highly likely" to engage in future harmful sexual conduct. *In re Linehan*, 557 N.W.2d 171, 180 (Minn. 1996) (*Linehan III*), *vacated on other grounds*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand*, 594 N.W.2d 867 (Minn. 1999). Six factors are to be considered in examining the likelihood of reoffense: (1) the offender's demographic characteristics; (2) the offender's history of violent behavior; (3) the base-rate statistics for violent behavior among individuals with the offender's background; (4) the sources of stress in the offender's environment; (5) the similarity of the present or future context to those contexts in which the offender used violence in the past; and (6) the offender's record of participation in sex-therapy programs. *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994) (*Linehan I*).

Here, Dr. Marshall testified that because appellant is male, his risk of reoffending is increased. Dr. Marshall also opined that even though appellant is 54, his age does not specifically lower his risk of sexual reoffending because he has deviant sexual interests. Dr. Marshall further expressed concern regarding appellant's most recent relationship while in the community with a woman who had two minor daughters. Dr. Marshall noted that appellant is an untreated sex offender who continues to deny part of his victim pool

and appears to have been grooming potential victims. Moreover, Dr. Marshall opined that appellant's sexual offenses can be considered violent behavior due to the young age of the victims. Thus, the first and second factors indicate that appellant is highly likely to reoffend.

The third factor is the base-rate statistics for violent behavior among individuals with appellant's background. Dr. Marshall completed a multi-factored risk assessment of appellant's risk for reoffense. In addition to general base-rate statistics, she considered a variety of actuarial and structured clinical judgment tools, including the MnSOST-R, PCL-R, and the SVR-20 which, taken together, indicated that appellant has a high risk of reoffense. Dr. Marshall also noted that both deviance and psychopathy are present in appellant's case, and that when measured on the SVR-20, the combination of those two conditions greatly increases an offender's risk to sexually reoffend. The district court specifically found Dr. Marshall's testimony to be persuasive, and this court defers to the district court's credibility determinations. *See Ramey*, 648 N.W.2d at 269. Therefore, the third factor supports the conclusion that appellant is highly likely to reoffend.

The fourth factor, the sources of stress in appellant's environment, indicates a high risk of reoffense in light of Dr. Marshall's concerns that appellant's stress would be substantial as a result of his status as a level-three sex offender and his history of substance abuse. Any return to substance abuse would likely reduce appellant's ability to control his sexual impulses. Moreover, appellant has failed to demonstrate a plan to address his deficits or substantially change his life. And, as Dr. Marshall noted, appellant

would no longer be supervised by the DOC, thereby increasing his risk to reoffend due to the lack of monitoring.

The fifth factor is the similarity of the present or future context to those contexts in which appellant used violence in the past. The record indicates that but for appellant's commitment as an SDP, appellant would return to a situation similar to that in which he lived in the community in the past, providing appellant with the same opportunities to commit additional acts of violence. This is especially exemplified by appellant's relationship in 2004 with a woman who had two minor children. As Dr. Marshall testified, such a situation would increase appellant's risk. Moreover, appellant has failed to participate in and complete sex-offender treatment despite repeated opportunities. In fact, appellant continues to deny abusing his daughters. Therefore, the fifth and sixth factors indicate a high likelihood of reoffense, and the district court did not err by concluding that appellant satisfies the requirements for commitment as an SDP.

B. SPP commitment

A petitioner must prove by clear and convincing evidence that the standards for commitment as an SPP are met. Minn. Stat. §§ 253B.18, subd. 1(a), .185, subd. 1. 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. The district court must find: (1) a habitual course of misconduct involving sexual matters; (2) an utter lack of power to control sexual impulses; and (3) dangerousness to others. *Linehan I*, 518 N.W.2d at 613. The psychopathic personality “excludes mere sexual promiscuity” and “other forms of social delinquency.” *In re Blodgett*, 510 N.W.2d 910, 915 (Minn. 1994). But the personality “is an identifiable and documentable violent sexually deviant condition or disorder.” *Id.*

1. Habitual course of misconduct

Appellant argues that there is insufficient evidence to support his commitment as an SPP because his sexually deviant behavior, which occurred in 1983 and 1993, does not constitute “frequent” or habitual behavior. But the record reflects that appellant had three victims, and that the offenses were similar in nature. The record also reflects that the sexual abuse occurred over an extended period of time, and that the offenses occurred during two separate and distinct time periods. Moreover, the record reflects that in 2004, while on release from prison, appellant was involved in a relationship with a woman with minor children (although there is no evidence that he ever met the children). Thus, the district court did not err in concluding that appellant engaged in a habitual course of sexual misconduct.

2. Utter lack of power to control

In considering the second element of an SPP analysis, the district court must weigh several significant 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) any factors that bear on the predatory sexual impulse and the lack of power to control it. *Blodgett*, 510 N.W.2d at 915.

Appellant argues that the record does not support the conclusion that he lacks the power to control his sexual impulses because he has controlled his sexual impulses for the past 15 years, even while on release from prison. But a review of the *Blodgett* factors supports the district court's conclusion. The record reflects that when appellant had the opportunity, he sexually assaulted young females, the sexual abuse occurred on a regular basis over an extended period of time, and that considering the age of the children, the abuse constituted violent behavior. The record also reflects that appellant's victims included his daughters and his girlfriend's seven-year-old daughter. Appellant was in a position of authority and trust with the victims, and he abused that position in assaulting his victims. The record further reflects that, with the exception of his abuse of K., appellant has taken no responsibility for his actions; he continues to deny that he abused his daughters and blames his ex-wife for fabricating the allegations of abuse. Moreover, appellant has not completed sex-offender treatment, has repeatedly refused psychological testing, and has refused treatment opportunities because he does not believe he has a problem. *See In re Irwin*, 529 N.W.2d 366, 375 (Minn. App. 1995) (concluding that lack of treatment and belief that no problem exists can indicate utter lack of control), *review denied* (Minn. May 16, 1995). Therefore, there is sufficient evidence in the record to support the conclusion that appellant is unable to control his sexual impulses.

3. Dangerousness to others

To determine whether an offender is dangerous to others, the district court must consider the same factors enumerated in *Linehan I* for determining whether an offender is highly likely to reoffend. *Linehan I*, 518 N.W.2d at 614. In other words, if a person is highly likely to reoffend, he is also dangerous. As discussed above in the analysis of the SDP criteria, appellant is highly likely to reoffend if released. Accordingly, appellant is also dangerous to others.

We note that appellant failed to complete treatment only because he would not admit to sexually abusing his daughters. Admitting the abuse is apparently a required step to treatment completion. Whether or not this should be a requirement, appellant refuses to admit the 1993 incident, although he does admit the 1983 incident. However, the record also reflects that appellant has regularly attended meetings, been employed successfully when furloughed, lived in his farmhouse until it was burned (after the mandatory community notification), has not reoffended, attends church regularly, is chemically free, and has not associated with children. The record further reflects that his most recent offenses (which he denies), occurred more than 16 years ago. Consequently, appellant's refusal to allow Dr. Marshall's evaluation is not surprising because his past attempts to cooperate in evaluation and treatment have resulted in the same outcome: prison. But nevertheless, the record contains clear and convincing evidence that appellant meets the criteria for commitment as an SDP and SPP, and precedent being what it is, we affirm.

II.

Appellant argues that his civil commitment under Minn. Stat. § 253B.02, subs. 18b, 18c, violates the constitutional prohibitions against double jeopardy. But the Minnesota Supreme Court dealt squarely with this issue in *Linehan IV*. The supreme court interpreted the double-jeopardy issue in light of the United States Supreme Court's decision in *Kansas v. Hendricks*, 521 U.S. 346, 369, 117 S. Ct. 2072, 2085 (1997), in which the Supreme Court determined that a Kansas commitment law similar to the Minnesota SDP law did not violate the prohibitions against double jeopardy or ex post facto laws. *Linehan IV*, 594 N.W.2d at 871–72. In *Linehan IV*, the Minnesota Supreme Court concluded that the Minnesota SDP law focused on treatment, because a committed person could be released once sufficiently rehabilitated and in control of his or her sexual impulses. *Id.* Further, the purpose of SDP was not deterrence or retribution, the aims of criminal statutes; rather, SDP could be invoked only when a person was suffering from a mental or personality disorder that prevented him or her from exercising control over his or her behavior. *Id.* at 871–72. This court recently reiterated support for this position in *Martin*, 661 N.W.2d at 641. Appellant has not and likely cannot present a compelling reason for revisiting this issue.

Affirmed.