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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-518**

In the Matter of the Civil Commitment of: Darwin Allen Lange

**Filed August 15, 2011
Affirmed
Larkin, Judge**

Pine County District Court
File No. 58-PR-10-13

MacKenzie Guptil, Pine City, Minnesota (for appellant)

John K. Carlson, Pine County Attorney, Pine City, Minnesota; and

Lori A. Swanson, Attorney General, John D. Gross, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

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

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his commitment as a sexually dangerous person (SDP). He argues that the district court applied incorrect legal standards in determining whether the statutory commitment criteria had been proved and that the evidence does not support the district court's conclusion that he meets the correct statutory criteria. Despite the district

court's failure to explain its analysis of all the relevant factors, appellant's commitment as an SDP is supported by clear and convincing evidence. Therefore, we affirm.

FACTS

On March 15, 2010, shortly before appellant Darwin Allen Lange's anticipated release from prison, where he was serving a 158-month sentence for criminal-sexual-conduct convictions, Pine County petitioned to commit Lange as an SDP. A hearing was held on the petition, and the following evidence was presented regarding Lange's sexual history.

In 1994, Lange married L.B. L.B. testified that Lange used to cut the back of her pajamas out while she slept so he could have sex with her while she was asleep. L.B.'s younger sister, M.M.O., who was approximately 15 years old, lived with L.B. and Lange for approximately six months. One night, L.B. found Lange in M.M.O.'s bedroom with his shirt off and his pants unbuttoned. M.M.O. told L.B. that she and Lange were "just talking."

M.M.O. testified at the commitment hearing that when she lived with L.B. and Lange, Lange was like a big brother to her. She stated that she and Lange would stay up late talking and that she confided in him. M.M.O. reported that Lange would come into her room after she had gone to sleep. One night, she woke up and discovered that Lange had his fingers in her vagina and his leg over hers. She was frightened and did not say anything. Instead, she rolled away from him. M.M.O. testified that Lange digitally penetrated her vagina on other occasions, but she did not recall the number of occurrences. M.M.O. also testified at Lange's 2001 sentencing hearing for his

convictions of criminal sexual conduct. At that hearing, M.M.O. stated that on one occasion, she fell asleep on the floor while watching television. When she woke up, Lange was running a paring knife across her stomach.

Lange testified that he touched M.M.O. several times while she slept. He stated that the touching was based on a mutual attraction: he thought M.M.O. liked him. Lange testified that he first touched M.M.O. over her clothes and then began touching her skin. He later penetrated her digitally. Lange indicated that he went into M.M.O.'s room a few times each month, approximately eight times in total. Lange testified that he tried to have intercourse with M.M.O. while she slept. He stated that he believed the sexual activity was consensual because of the mutual attraction, but he now realizes that M.M.O. did not consent to this sexual activity and that because of their age differences, it was wrong.

Evidence was also presented to show that Lange engaged in voyeurism. L.B. testified that Lange told her that he would occasionally look at people through their home windows. Lange showed L.B. the location of the homes that he looked into, including one house where he watched as a woman slept on her couch. Lange also admitted that he had peeped through the window at his brother's girlfriend, R.P. R.P. testified that she lived with Lange's brother, M.L., in an apartment below L.B. and Lange. On one occasion, R.P. noticed footprints outside of her bedroom window. R.P. believed that the footprints were Lange's. When she confronted him, he "teared up," acknowledged that the footprints were his, and apologized. R.P. also testified that M.L. saw Lange outside of their bathroom window on another occasion. R.P. felt afraid because Lange could have watched her use the toilet or take a bath.

M.L. testified that he was aware of R.P.'s assertions that Lange was peeping in her window. But he clarified that he did not find Lange outside of the window; rather, he heard about the incident from R.P. and later confronted Lange. When he did, Lange was intoxicated. M.L. testified that he told Lange that he did not understand why Lange was by the window. But this testimony is inconsistent with a statement that M.L. gave to Pine County law enforcement in December 1995. In that report, M.L. stated that he and R.P. were going to bed when they heard some voices outside the window. M.L. later confronted Lange, who broke down and "admitted . . . that he was looking through our windows." The district court found that "the evidence presented by R.P. and [L.B.], and the statements made by [M.L.] contemporaneous to the events, is of sufficient credibility to indicate that Lange engaged in inappropriate sexual voyeurism behaviors with R.P. and with unknown persons in the community."

At the commitment hearing, Lange denied that he was involved with inappropriate window peeping.¹ He indicated that he looked into people's homes from an appropriate distance, merely taking note of people involved in ordinary activities. He denied peeping for sexual gratification: he claims that he just went walking at night and happened to see half-dressed women. He also denied telling L.B. that he had engaged in peeping.

Evidence was also presented that Lange attempted to engage in sexual misconduct with his mother-in-law during a burglary of her home. L.A.G. is the mother of L.B. and

¹ The district court noted in its indeterminate commitment order that Lange admitted to the Minnesota Sex Offender Program (MSOP) assessor that, over the course of a few years, he took walks three to four times per week with the intention of trying to observe females undressing.

M.M.O. On December 7, 1995, L.A.G. reported to Pine County law enforcement that shortly before six a.m. that day, she woke to discover a man next to her who had “slipped his hands under the blankets and tried to crawl into bed.” The man was dressed completely in black and wore a ski mask that concealed his face. L.A.G. asked the man what he was doing in her house and told him to get out. Lange later confessed to this crime and pleaded guilty to first-degree burglary. He was required to undergo a sex-offender evaluation and follow the recommendations. Lange completed a psychological evaluation, which recommended further individualized counseling. Lange was discharged from probation on the burglary conviction on August 26, 1999. His discharge report stated, “All special conditions have long since been completed. [Lange] did undergo counseling for a period of time at Five County Mental Health and it was decided that he was not considered a danger to act out in the future.”

At his commitment hearing, Lange testified that he had been drinking before he went to L.A.G.’s home. He parked at the end of the driveway, about one-eighth mile away from the home. He used a credit card to gain access through the front door. Once inside, he looked through drawers. After realizing that someone was home, he cut the phone line. He went into L.A.G.’s bedroom, took her purse, left the room, rummaged through the purse, and took some of the contents. He then went back into the bedroom and touched L.A.G.’s inner thigh, above the knee. He stated that he intended to touch her vaginal area. The district court found that

it is more likely than not that [Lange] went to L.A.G.’s home with the intent of engaging in sexual activity. He expected that L.A.G. would be in the home, or alternatively, the sexual

activities he anticipated became his primary goal at such time as he became aware that L.A.G. was present. Although he testified that he went to burglarize the home, his preparatory actions: parking a distance away, wearing clothing to mask his identity, and then cutting the phone lines after entering the home, indicate that he expected the residence to be occupied. It is likely that the other actions taken by [Lange] were to make it appear like a burglary had occurred in an effort to cover up the sexual nature of his activities.

Evidence was also presented regarding an alleged sexual offense against Lange's former sister-in-law, M.L. In 1995, M.L. and her husband stayed overnight at Lange and L.B.'s apartment. M.L. was sleeping with her husband in the second bedroom. Lange allegedly snuck into M.L.'s bedroom, put his hand under the bedding, and rubbed her thigh. He left the room when M.L. began to wake up. At the hearing, Lange testified that he did not recall this incident. M.L. did not testify at the hearing.

Lange's sexual-assault victims also included an eight-year-old child, S.J.K. Lange resided with his fiancée, S.K., from approximately 1997 through 2000. S.J.K. is S.K.'s daughter; S.J.K. lived with S.K. and Lange. Lange testified that S.J.K. was eight years old when he began to sexually abuse her. He stated that she came home from school one day while he was watching a pornographic movie, and he allowed her to watch the movie with him. He explained to S.J.K. that the movie was about "people having sex." Approximately one month after showing her the movie, Lange convinced S.J.K. to perform oral sex on him. He stated that he told her to "just suck it" and she did not resist. Lange testified that he ejaculated into her mouth. Lange further stated that he also touched S.J.K.'s vaginal area with his hand and a vibrator. Lange tried to penetrate S.J.K.'s vagina with his penis, but she said "owie." Lange covered her eyes with a t-shirt

and tried again, but he was unsuccessful. S.J.K. reported that Lange tied his t-shirt around her face during the abuse. Lange only recently acknowledged his abuse of S.J.K.

On May 7, 2000, S.J.K.'s father found her in the bathroom with her five-year-old half-brother. Both children were naked and the five-year old stated that S.J.K. was showing him how to play sex. S.J.K. told her step-mother that she had learned these things from Lange. S.J.K. told an investigator that Lange had touched her potty area; that their clothes were off; that he put his potty area inside of her potty area; that he used lotion and put a t-shirt over her face; and that he stuck his potty area in her mouth, she sucked it, pee came out of it, and he made her swallow it. At the commitment hearing, S.J.K. testified that in her memory, Lange had abused her daily, but she did not remember how many times the abuse occurred.

In May 2001, Lange was convicted of three counts of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct for his abuse of S.J.K. In June, Lange underwent a court-ordered psychosexual evaluation prior to sentencing. Lange was diagnosed with pedophilia; voyeurism; major depressive disorder, recurrent, moderate; alcohol abuse; antisocial personality disorder; history of anorexia; legal problems, loss of relationship, unemployment; current GAF 45. The assessor, Jennifer White, concluded that

Lange is a patterned sex offender who is not amenable to outpatient treatment as a sex offender due to his extensive offending history and his absolute denial of sexual contact with the female child of the current offense. He will need extensive long-term treatment in a secure residential environment such as a correctional facility if treatment is to be successful. He is a considerable risk to the safety of the

people of the community he lives in given his extensive history of sexually assaultive behavior.

Lange has never completed the recommended sex-offender treatment.

At the commitment hearing, the court heard the testimony of three expert witnesses. Dr. Harlan Gilbertson, a licensed psychologist, was the first court-appointed examiner. Dr. Gilbertson reviewed Lange's records and interviewed Lange for approximately 3.5 hours. Dr. Gilbertson's diagnosis of Lange included the following: pedophilia, sexually attracted to females; voyeurism; alcohol dependence; sexual abuse of a child; personality disorder; and untreated level III sex offender with denial and diminished insight. Dr. Gilbertson expressed concern regarding Lange's denials and his unwillingness to speak about the abuse. Dr. Gilbertson testified that although Lange admits to his acts, he is unwilling to admit to the thoughts, urges, and intentions that underlie the acts. Dr. Gilbertson also testified that Lange does not recognize the coexisting thoughts, fantasies, and arousal. Dr. Gilbertson opined that Lange must have had fantasies involving children in order to have been able to ejaculate when abusing S.J.K., but Lange denies such thoughts or fantasies. Dr. Gilbertson testified that Lange has no insight into his offending behaviors. He further opined that Lange's marital infidelity was evidence of his impulsivity.

Dr. Gilbertson assigned Lange a score of two on the STATIC-99, an actuarial risk instrument designed to assist in the prediction of sexual and violent recidivism for sexual offenders, which places him in the "low-to-moderate" risk category. On the MNSOST-R, another actuarial tool, Lange obtained a score of five which placed him in the

“moderate” risk category, with a recidivism rate of 25%. After assessing the specific statutory elements for civil commitment as an SDP, Dr. Gilbertson concluded that Lange is highly likely to engage in future acts of harmful sexual conduct. He further opined that although Lange recently completed chemical dependency treatment, this does not diminish his risk of reoffending sexually because his sex offenses and his alcohol abuse are not co-occurring and the absence of sex-offender treatment enhances the risk of Lange’s reoffending. Dr. Gilbertson placed Lange at a moderate to high risk for reoffending sexually, and found that, as a result of his personality disorders, he evidences a substantial inability to control his sexual impulses.

Dr. Thomas Alberg was the second court-appointed examiner. He reviewed Lange’s records and interviewed him. Dr. Alberg noted that Lange needs sex-offender treatment and that Lange’s “presentation is consistent with someone who has not completed sex offender programming in that he has not accepted full responsibility for his offense behavior and is not aware of any offense triggers or aware of his offense cycle.” Dr. Alberg’s diagnosis of Lange includes the following: pedophilia, sexually attracted to females; alcohol dependence; rule out voyeurism; history of major depression; history of anorexia nervosa; and personality disorder. In Dr. Alberg’s view, Lange’s understanding of his sexual offending cycle is presently at a basic level: “I did it but I don’t understand why.” Dr. Alberg stated that Lange does not know or understand the cues and triggers that influenced his offenses, and he agrees that Lange needs to successfully complete sex-offender treatment. Nonetheless, Dr. Alberg recommended that the district court consider “some other disposition of [Lange’s] case such as a stay of

commitment.” He opined that Lange was not highly likely to reoffend and therefore recommended that Lange not be committed as an SDP. But Dr. Alberg conceded that he had reservations about his recommendation because it was a “close call.”

Dr. Rosemary Linderman, a licensed psychologist, was retained as an expert by the petitioner. Dr. Linderman did not conduct a diagnostic interview of Lange, nor did she perform any psychometric testing. Instead, she reviewed the transcripts of the interviews conducted by Dr. Gilbertson and Dr. Alberg, their written reports, and the records contained in the hearing exhibits. She based her professional diagnosis of Lange on the information she was able to gather from these sources and her observation of the civil commitment hearing. Dr. Linderman’s diagnosis of Lange included the following: pedophilia, sexually attracted to females, nonexclusive; paraphilia; history of polysubstance abuse; history of major depression; history of anorexia nervosa; and personality disorder. She opined that Lange meets the statutory criteria for civil commitment as an SDP. She recommended that Lange be “committed to the Minnesota Sex Offender Treatment Program, a structured and secure program. This placement setting could provide him the opportunity to receive treatment while monitoring his progress prior to his release back to the community.”

After the hearing, the district court ordered Lange committed as an SDP pending a 60-day review hearing. After the 60-day review hearing, the district court committed Lange indeterminately. This appeal follows.

DECISION

A petitioner must prove the elements of commitment by clear and convincing evidence. Minn. Stat. §§ 253B.18, subd. 1(a), .185, subd. 1 (2008). On review, we defer 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). "Where the findings of fact rest almost entirely on expert testimony, the [district] court's evaluation of credibility is of particular significance." *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). But we 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).

A person is considered sexually dangerous if that person: "(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 (2008). "Harmful sexual conduct" is defined as "sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another." *Id.*, subd. 7a(a) (2008). It is not necessary to prove that the person 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*). 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 harmful sexual conduct. *Id.*

Course of Harmful Sexual Conduct

Lange concedes that he has engaged in a course of harmful sexual conduct. He nonetheless argues that the district court “erred in determining that [he] offended against his former sister-in-law, M.L.” The state agrees that the district court mistakenly found that Lange’s brother M.L. testified that Lange told him that Lange had touched his former sister-in-law, M.L., while she slept. Although we agree that this finding was clearly erroneous, any error in the court’s finding that Lange offended against his former sister-in-law does not constitute reversible error because Lange admits that he otherwise engaged in a course of harmful sexual conduct. *See* Minn. R. Civ. P. 61 (“The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.”).

Sexual, Personality, or other Mental Disorder or Dysfunction

It is undisputed that Lange has manifested a sexual, personality, or other mental disorder or dysfunction. All three experts diagnosed him with pedophilia and a personality disorder. But this statutory element also has a volitional or control factor: the present disorder or dysfunction must prevent the defendant from adequately controlling his or her sexual impulses. *See Linehan IV*, 594 N.W.2d at 876.

Lange argues that the district court erred by failing to analyze whether or not he is able to control his sexual impulses. The district court concluded that “[t]here is clear and convincing evidence that [Lange] currently suffers from sexual or personality disorders

that constitute mental disorders” without discussing the control factor. Although it would have been helpful to have had an explanation of the reasoning that supports the district court’s conclusion that Lange meets all of the standards for commitment, we 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.” *Thulin*, 660 N.W.2d at 144. Therefore, the inadequate explanation does not require remand if the record provides clear and convincing support for the district court’s conclusion.

Lange argues that the evidence is insufficient to support a conclusion that he is unable to adequately control his sexual impulses. We disagree. Dr. Linderman testified that Lange lacks adequate control over his sexually-harmful behavior as a result of his disorders. On direct examination, Dr. Linderman was asked what role Lange’s sexual impulses play in his risk of reoffense. Dr. Linderman responded:

Well, it’s huge because his history doesn’t include evidence that he tried to stop his behavior. It doesn’t include evidence that he intervened himself; instead, it includes evidence that he was bold in offending against individuals under the same roof as his girlfriend or wife. When he had a significant and consenting relationship, he still had to have more. It’s also significant in that he dared to have – or to exercise his sexual urges with people who could easily be discovered and with high stakes, like losing his wife, his girlfriend. I mean, it was like there was no control, no brakes on his sexual impulsivity.

Dr. Gilbertson opined that Lange has diagnosed sexual, personality, or other mental disorders and “as a result of these diagnoses, [he] evidences a substantial inability to control his sexual impulses.” Dr. Gilbertson further stated: “We have seen no change in his level of motivation to understand his behaviors. . . . He has done no research on

sexual offending, relapse prevention, made no attempt to gain insight, which leads me to believe that these conditions are currently pervasive and untreated.” And Dr. Alberg testified that Lange does not know or understand the cues and triggers that influence his offenses.

In sum, the experts testified that Lange is unable to control his sexual behavior as a result of his disorders. And the evidence shows that Lange does not have insight regarding his sexually-inappropriate behaviors. Moreover, Lange abused S.J.K. after he completed probation for his burglary conviction, which included individualized counseling with a therapist experienced in treating sex offenders. On this record, there is clear and convincing evidence to sustain a conclusion that Lange’s disorders do not allow him to adequately control his sexual impulses. Thus, the district court did not err by concluding that Lange meets the second prong of the statutory standard for SDP commitment.

Likely to Engage in Acts of Harmful Sexual Conduct

Lange argues that the commitment must be overturned because the court did not make a conclusion or finding of fact indicating that he was highly likely to reoffend. The district court concluded that Lange “is likely to engage in future acts of harmful sexual conduct.” But 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 harmful sexual conduct. *Linehan IV*, 594 N.W.2d at 876. Moreover, courts are to consider six factors when making this determination: (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*); *see also In re Linehan*, 557 N.W.2d 171, 189 (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) ("We conclude that the guidelines for dangerousness prediction in *Linehan I* apply to the SDP Act . . ."). The supreme court suggested that the district courts consider such factors "particularly where . . . there is a large gap of time between the petition for commitment and the appellant's last sexual misconduct." *Linehan I*, 518 N.W.2d at 614.

This court has noted that besides expert testimony, which may play a role in the determination of future dangerousness, the *Linehan I* factors and the committed person's "relevant personal attributes and behavior" should be considered by the district court. *In re Linehan*, 544 N.W.2d 308, 314 (Minn. App. 1996) (*Linehan II*), *aff'd*, 557 N.W.2d 171 (Minn. 1996), *vacated and remanded*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand*, 594 N.W.2d 867 (Minn. 1999). "No single factor is determinative of this complex issue." *In re Navratil*, __ N.W.2d __, __, 2011 WL 2304169, at *6 (Minn. App. June 13, 2011). The district court may also consider evidence not specifically listed and is not foreclosed from isolating the most important factors in predicting harmful sexual conduct. *Linehan III*, 557 N.W.2d at 189.

Regrettably, the district court did not specifically reference or discuss the *Linehan I* factors. But, as noted above, we 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.” *Thulin*, 660 N.W.2d at 144. Therefore, the district court’s failure to explain its analysis does not require remand if the evidence clearly and convincingly supports a conclusion that Lange is highly likely to reoffend.

Lange argues that the evidence is insufficient to support such a conclusion. We disagree. Dr. Alberg concluded that Lange “has a number of demographic characteristics which would be considered high risk for re-offense. He is male and has a problematic relationship history. He also has a history of educational problems.”

Dr. Alberg noted that Lange’s history of violent behavior is limited to his sex offenses. In 2001, M.M.O. testified that she had fallen asleep on the floor while watching television and woke to find Lange running a paring knife across her stomach. And Lange attempted to sexually assault L.A.G. after he broke into her house and cut the phone lines, while wearing a ski mask. These sexual offenses had a violent component to them. Dr. Linderman stated that Lange “continues to be seen as not able or willing to acknowledge the violent nature of his sexual behavior. [This] ... aggravates his level of dangerousness.”

With regard to base-rate recidivism statistics, Dr. Linderman stated,

Significant to . . . Lange’s history is his being identified as a pedophile . . . ; he also engaged in sexual penetration of a teenage female common to a rapist. As such, he has behavioral factors that raise his risk to reoffend in two

separate categories, with his history also including inappropriate physical contact with adult females.

Dr. Gilbertson placed Lange at a moderate to high risk for reoffending sexually. But Dr. Alberg stated that based on Lange's "scores on actuarial instruments and the comparison of these scores to the base-rate, it appears that his likelihood of re-offending is approximately at the base-rate of sex offenders in general." Although the experts disagree regarding the implications of the base-rate recidivism statistics in this case, this factor is not dispositive. *See Linehan III*, 557 N.W.2d at 189 (stating that statistical evidence of recidivism "is only one of the six factors" and that district courts may consider evidence beyond the *Linehan* factors in addressing the "complex and contested" matter of predicting dangerousness); *Navratil*, 2011 WL 2304169, at *6 ("No single factor is determinative of this complex issue.").

Dr. Alberg stated that because Lange is a convicted sex offender and would be required to register with the state, he will have significant stress in his environment when released into the community. Lange would likely have difficulty finding housing and employment. Dr. Linderman noted that Lange's "sources of environmental stress include his failing to learn from his mistakes, his inability to report or realistically appraise his offense history, his entitlement and his indirect expression of anger." The district court found that "[c]onsidering the totality of [Lange's] situation if released into the community, his securing an employment position that will meet his economic needs would be, at best, quite difficult."

Moreover, if Lange is released as an untreated sex offender, the present context will be similar to those in which he offended in the past. Dr. Gilbertson testified that Lange has no insight into his behaviors or their consequences. And the evidence indicates that Lange “remains entitled and angry, demanding that his self perceived low risk for reoffense be accepted by others. He claims that he is safe to be in the community in spite of his not having participated in treatment and his ongoing minimization of his sexual behavior.” There is no indication that Lange has adequately identified the reasons for his sexual offenses. Thus, there is reason to believe that Lange’s future behavior will be similar to his past behavior.

Finally, and importantly, Lange has not participated in sex-offender treatment, with the exception of a few individualized sessions in 1996-97, following his burglary conviction. This fact weighs heavily in favor of commitment. In fact, Dr. Alberg, who recommended against commitment as an SDP noted, “There is no question that an area of concern regarding Mr. Lange is that he has not completed sex offender programming . . . and his presentation is consistent with someone who has not completed sex offender programming in that he has not accepted full responsibility for his offense behavior and is not aware of any offense triggers or aware of his offense cycle.” In fact, Lange acknowledged that he is not aware of the triggers that might precipitate future sexual offenses and admitted that he does not have a relapse plan to keep him from committing further sexual offenses. On this record, there is clear and convincing evidence that Lange is highly likely to engage in acts of harmful sexual conduct.

We also note that there is no indication that a less-restrictive alternative to commitment would be sufficient. *See* Minn. Stat. § 253B.18, subd. 1(a) (Upon a finding that an individual is an SPP or an SDP, “[t]he 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.”). Drs. Gilbertson and Linderman, as well as Jennifer White in 2001, opined that Lange needs placement in a long-term, secure, inpatient facility in order for treatment to be successful. And, as noted by the district court, “the likely present prognosis for [Lange’s] successful return to life in the community [is] extremely guarded. . . . He has limited funds, and it will be very difficult for him to obtain appropriate housing.” Without stable housing and income, it is unrealistic to believe that Lange will successfully complete outpatient sex-offender treatment.

In conclusion, despite the district court’s failure to explain its analysis of all the relevant factors, the record clearly and convincingly supports the district court’s conclusion that Lange meets the standard for commitment as an SDP. We therefore affirm.

Affirmed.

Dated:

Judge Michelle A. Larkin