OAH 82-1100-38400

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF CORRECTIONS

In the Matter of the Risk Level Determination of Izell W. Robinson	**ORDER GRANTING MOTION FOR SUMMARY DISPOSITION**

This matter is pending before Administrative Law Judge Barbara J. Case pursuant to a Motion for Summary Disposition (Motion) filed June 23, 2022, by the Department of Corrections' (Department) End of Confinement Review Committee (ECRC or Committee). The ECRC personally served Izell W. Robinson (Petitioner) on June 29, 2022. The record closed on July 8, 2022, with the filing of Petitioner's response to the Motion.

Ed Stockmeyer, Assistant Attorney General, appears on behalf of the ECRC. Izell W. Robinson (Petitioner) appears on his own behalf and without legal counsel.

Based on the record and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

1. The ECRC's Motion for Summary Disposition is **GRANTED**.

2. Petitioner's appeal is **DISMISSED**.

3. Petitioner's assignment of Risk Level 3 is **AFFIRMED**.

Dated: October 4, 2022

BARBARA J. CASE
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 244.052, subd. 6(c) (2022), this Order is the final decision in this case. Any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63-.69 (2022).

MEMORANDUM

I. Introduction

On April 28, 2022, the ECRC assigned Petitioner a Risk Level 3, his presumptive risk level.[1] Petitioner appeals the risk level assigned to him by the ECRC under the Minnesota Community Notification Act (Act).[2] The ECRC moves for summary disposition, contending that Petitioner has not identified an error in the ECRC's assignment of his risk level or shown that any disputes of material fact exist that would require a hearing.[3]

II. The Minnesota Community Notification Act

Minnesota Law provides that individuals convicted of certain criminal offenses are considered "predatory offenders" and are subject to the Minnesota Community Notification Act (Act).[4] The Act requires law enforcement agencies in the area where a predatory offender resides, expects to reside, is employed, or is regularly found, to disclose information "relevant and necessary to protect the public and to counteract the offender's dangerousness."[5] The extent of the information disclosed, and the persons to whom the disclosure is made, must relate "to the level of danger posed by the offender, to the offender's pattern of offending behavior, and to the need of community members for information to enhance their individual and collective safety."[6]

The Act creates a tiered structure of three risk levels to which an offender may be assigned, and that assignment determines the scope of community notification.[7] If an offender is assigned to a Risk Level 1, notification of the offender's residence may be given to local law enforcement agencies, as well as victims and witnesses related to the offender's criminal history.[8] Risk Level 2 permits additional notice to individuals and groups, such as schools and daycares, likely to be victimized by the offender.[9] Risk Level 3 permits notice to be given to any member of the community whom the offender is likely to encounter unless law enforcement determines public safety might be compromised or more limited disclosure is necessary to protect the identity of the offender's victim(s).[10]

Every predatory offender confined in a Minnesota state correctional or treatment facility must be assessed by an ECRC prior to release.[11] The ECRC considers the

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[1] *See* Ex. 2 (ECRC Risk Assessment Report).
[2] Ex 1 (Notice of Appeal); *see also* Minn. Stat. § 244.052 (2022).
[3] Mem. in Support of the ECRC's Mot. for Sum. Disposition of Risk Level Admin. Review (June 23, 2022) (ECRC Mem.).
[4] Minn. Stat. §§ 243.166, subd. 1b, 244.052, subd. 4(a) (2022).
[5] Minn. Stat. § 244.052, subd. 4(a).
[6] *Id.*
[7] *See id.*
[8] *Id.*, subd. 4(b)(1).
[9] *Id.*, subd. 4(b)(2).
[10] *Id.*, subd. 4(b)(3).
[11] *Id.*, subd. 3.

public risk posed by each predatory offender upon release and determines the appropriate risk level assignment.[12]

In doing so, the ECRC is required by law to apply six risk factors set forth in Minn. Stat. § 244.052, subd. 3(g). These risk factors are: (1) the seriousness of the offense should the offender reoffend; (2) the offender's prior offense history; (3) the offender's characteristics; (4) the availability of community supports available to the offender; (5) whether the offender has indicated, or credible evidence in the record indicates, that the individual will reoffend if released to the community; and (6) whether the offender demonstrates a physical condition that minimizes the risk of re-offense.[13] This list is not exclusive.[14]

In addition, the ECRC must score an offender using a risk assessment tool. The score from that tool translates into a presumptive risk level.[15] The ECRC, in its discretion, may deviate from the presumptive risk level by applying mitigating factors for a downward departure or special concerns for an upward departure.[16]

After considering the offender's score on the risk assessment tool, the impact of any mitigating factors or special concerns, and the statutory risk factors, the ECRC assigns the offender to a risk level. The ECRC must prepare a report that "specifies the risk level to which the offender has been assigned and the reasons underlying the committee's risk assessment decision."[17]

A risk level assignment applies for a minimum of ten years.[18] During that time, the level of notice corresponding to the assigned risk level must be given every time the offender changes residence.[19] An offender may seek a reassessment of the assigned risk level after three years have passed and may renew the request once every two years following subsequent denials.[20]

Additionally, a predatory offender assigned to Risk Level 2 or Risk Level 3 may seek administrative review of the ECRC's determination.[21] In such a review, the Administrative Law Judge considers whether the ECRC's risk assessment determination was erroneous and, based on this decision, shall either uphold or modify

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[12] *Id.*
[13] *Id.*, subd. 3(g).
[14] *Id.*
[15] *Id.*, subd. 2.
[16] Minn. Dep't of Corrections Policy No. 205.220 (Aug. 5, 2022); *see also In re the Risk Level Determination of R.B.P.*, 640 N.W.2d 351, 354 (Minn. Ct. App. 2002).
[17] Minn. Stat. § 244.052, subd. 3(f).
[18] *Id.*, subd. 4(f); *see also* Minn. Stat. § 243.166, subd. 6(a) (2022).
[19] *See* Minn. Stat. § 244.052, subd. 4(f).
[20] *Id.*, subd. 3(i).
[21] *Id.*, subd. 6(a).

the review committee's determination.[22] The decision of the Administrative Law Judge is final, subject to appellate judicial review.[23]

III. Petitioner's Background

Petitioner is subject to community notification for two separate criminal sexual conduct offenses. His history includes several additional sex-based allegations and supervision failures. Petitioner was convicted of fourth-degree criminal sexual conduct in 2002,[24] after he committed forced vaginal penetration against a 21-year-old female while threatening to harm her.[25] He initially received a stay of imposition of a 21-month sentence and was placed on probation for 10 years.[26]

On September 17, 2002, Petitioner was incarcerated following two harassment restraining order offenses.[27] Ahead of his release from custody on May 5, 2003, the ECRC assigned Petitioner a Risk Level 1, his presumptive risk level according to the assessment recommendation done at that time.[28] Petitioner was reincarcerated on a release violation on September 26, 2003, for having contact with a minor.[29]

On January 20, 2004, Petitioner's 21-month sentence from his 2002 criminal sexual conduct conviction was executed after he was charged with a new offense of fourth-degree criminal sexual conduct.[30] That charged offense involved Petitioner contacting multiple juvenile females, one of whom alleged that he had kissed her, fondled her breast, and touched her buttocks.[31] This charge was dismissed because the victim did not want to proceed with prosecution.[32]

Petitioner received his second risk level on January 30, 2004, when the ECRC assigned him a Risk Level 2, and considered assigning Risk Level 3, before his release from custody on February 2, 2004.[33] Petitioner was reincarcerated on April 16, 2004, October 8, 2004, and April 28, 2005, for violating the terms of his supervision, including failure to complete sex-offender treatment.[34]

Petitioner's current period of incarceration follows his 2012 conviction for first-degree criminal sexual conduct.[35] In that case, he was convicted of kidnapping and

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[22] *Id.*, subd. 6(c).
[23] Minn. Stat. §§ 14.63, 244.052, subd. 6(c) (2022).
[24] Ex. 4 at 235-36 (ECRC Packet).
[25] *Id.* at 258.
[26] *Id.* at 99, 240.
[27] *Id.* at 84, 99, 217-31.
[28] *Id.* at 210-13.
[29] *Id.* at 84, 174, 203-07.
[30] *Id.* at 176-78.
[31] *Id.* at 176-77.
[32] *Id.* at 14.
[33] *Id.* at 84, 171-74.
[34] *Id.* at 84, 144-45, 150-51, 162-63.
[35] *Id.* at 97.

a second count of first-degree criminal sexual conduct.[36] Those charges arose out of a report by a woman who was approached by Petitioner, while he was in a car, at a bus stop in July 2011.[37] At first, the woman refused to get into the car.[38] She got in after Petitioner threatened her with what she believed was a knife.[39] When the woman tried to get away, Petitioner struck her several times, strangled her, and raped her.[40] Afterward, he drove the woman to a residence, where he again raped her.[41] According to the sexual assault examination, the woman sustained injuries to her face, head, and vagina; bruising and swelling to three areas of her hymen; and a significant tear to her posterior fourchette. She experienced so much pain that she was unable to complete the internal examination.[42] In Petitioner's appeal from this conviction, the Court of Appeals described trial testimony as follows: "The examining nurse, who had performed approximately 270 sexual assault examinations, noted that [the victim] had the most extensive genital injuries she had seen . . . ." [43]

On June 16, 2021, Dr. Judy Yang prepared a Sexual Psychopathic Personality/Sexually Dangerous Person (SPP/SDP) Review Report for the DOC's SPP/SDP Screening Committee. The purpose of the report was to assist the Committee in reaching a preliminary determination on a potential petition for civil commitment for Petitioner.[44] Dr. Yang noted that Petitioner had incurred formal disciplinary infractions while incarcerated for, but not limited to: threatening others; abuse/harassment; disorderly conduct; and possession of inappropriate sexual writings.[45] Dr. Yang also noted a number of factors indicating Petitioner is a risk for future sexual misconduct including; prior diagnoses of Paraphilic Disorder; Narcissistic Personality Disorder; Other Specified Personality disorder with Antisocial Features; a personal history of sexual abuse; repeat failure of sex offense specific treatment; a history of supervision/probation failures. Dr. Yang determined that Petitioner's the Minnesota Sex Offender Screening Tool, version 4.0 (MnSOST-4.0) score placed him in a group considered to be a moderate risk of sexually reoffending within a four-year period and his Static-99R score placed him a group at above average risk to sexually reoffend.[46] Ultimately, the Hennepin County Attorney's Office declined to pursue civil commitment of Petitioner.[47]

On March 11, 2022, Department psychologist Terrel Backes, Psy.D., L.P., completed a risk level recommendation report to aid the ECRC in its assessment.[48] In

[36] *Id.* at 92-94.
[37] *Id*. at 107.
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id*. at 108.
[43] *State v. Robinson*, No. A12-1638, 2013 WL 5508141, at *2 (Minn. Ct. App. Oct. 7, 2013.).
[44] Ex. 4. at 13 (ECRC Packet).
[45] *Id*. at 16.
[46] *Id*. at 24.
[47] *Id*. at 12.
[48] Ex. 3 (Risk Assessment Recommendation).

his report, Dr. Backes noted that Petitioner's score on the MnSOST-4.0 indicated a predicted probability of sexual recidivism of 4.64 percent four years post-release, which placed Petitioner in the 90.00 percentile of sexual offenders and in the presumptive Risk Level 3 range.[49] As a result, Dr. Backes recommended that the ECRC assign Petitioner a Risk Level 3.[50] On May 9, 2022, Petitioner appealed the ECRC's risk level determination.[51]

IV. Summary Disposition Standard of Review

Summary disposition is the administrative law equivalent of summary judgment.[52] A motion for summary disposition shall be granted when there is no genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law.[53] The Office of Administrative Hearings follows the summary judgment standards developed in the state district courts when considering motions for summary disposition in contested case matters.

The function of the Administrative Law Judge on a motion for summary disposition, like a trial court's function on a motion for summary judgment, is not to decide issues of fact, but to determine whether genuine, material factual issues exist.[54] The Administrative Law Judge does not weigh the evidence;[55] instead, the Judge views the facts and evidence in a light most favorable to the non-moving party.[56]

The moving party has the initial burden to show the absence of any genuine issue regarding any material fact.[57] A fact is material if its resolution will affect the outcome of the case.[58] If the moving party meets the initial burden, the burden shifts to the non-moving party to prove the existence of any genuine issue of any material fact.[59] A genuine issue is not a "sham or frivolous" one,[60] and it cannot rely on mere allegations or denials.[61] Instead, a genuine issue requires presentation of specific facts demonstrating a need for resolution in a hearing or trial.[62]

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[49] *Id*. at 3, 9; Ex. 3a (MnSOST-4.0 scoring sheet).
[50] Ex. 3 at 8 (Risk Assessment Recommendation).
[51] Ex. 1 at 1 (Notice of Appeal).
[52] *Pietsch v. Minn. Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004); *see also* Minn. R. 1400.5500(K) (2021).
[53] *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. Ct. App. 1985).
[54] *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).
[55] *Id*.
[56] *Ostendorf v. Kenyon*, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984).
[57] *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).
[58] *O'Malley v. Ulland Bros*., 549 N.W.2d 889, 892 (Minn. 1996).
[59] *Thiele,* 425 N.W.2d at 583.
[60] *Highland Chateau, Inc. v. Minn. Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984).
[61] *DLH*, 566 N.W.2d at 71.
[62] *See* Minn. R. Civ. P. 56.05.

Summary disposition cannot be used as a substitute for a hearing or trial on the facts of a case.[63] Thus, summary disposition is only proper when no fact issues need to be resolved.[64]

V. ECRC Risk Assessment

Dr. Backes, scored the MnSOST-4.0 for Petitioner as follows:[65]

Items	**Values**
Total Violent Offense Sentences	2
Felony Offense Sentences	3
VOFP	5
Predatory Offenses	2
Stranger Victims	1
Number of Male Victims	0
Multiple Age Groups (0=No 1=Yes)	1
Employed (0=No 1=Yes)	0
Married	0
Post-Secondary Degree (0=No 1= Yes)	1
SO/CD Treatment	0
Release Violator (0 = No 1 = Yes)	0
Age at Release	41

In the risk assessment recommendation, Dr. Backes noted Petitioner's criminal history and that the Risk Level 3 assignment is consistent with Petitioner's score on the MnSOST-4.0. As the presumptive risk level was recommended, Dr. Backes saw no reason to apply any Special Concerns. However, Dr. Backes noted that had Petitioner

[63] *Sauter*, 70 N.W.2d at 353.
[64] *Id*.
[65] Ex. 3a (MnSOST-4.0 scoring sheet).

not scored in the presumptive Risk Level 3 Range, five highly relevant Special Concerns would have been applied to support an upward departure from Risk Level 2.[66]

The applicable Special Concerns were: (1) a history of reoffending after initial detection because, among other events, Appellant was convicted of sexually assaulting a stranger in July 2011 despite a prior sexual offense conviction; (2) a history of prior supervision failures indicating an increased potential to reoffend; (3) a history of severe or gratuitous violence because Appellant's 2011 offense relied on considerable violence; (4) predatory offense behavior, and (5) the nature of the victim pool suggests a need for broader public notification because Appellant has been convicted of sexually assaulting a stranger adult female such that his victim pool is thought to encompass stranger females and female acquaintances and so presents with a broad potential victim pool which is best represented by Risk Level 3.[67]

Petitioner attended and spoke at length about his history at the ECRC meeting.[68] At the conclusion of the meeting, the ECRC unanimously voted to assign Petitioner a Risk Level 3.[69]

VI. Arguments

In his appeal letter, at the ECRC meeting, and in his response to the present motion, Petitioner argued that his presumptive risk level should be 2 and that the special concerns do not apply to him. Regarding his presumptive risk level, Petitioner contends that the MnSOST-4.0's item regarding "stranger victims" should have been scored as a 0 because, he contends, his 2011 sexual assault victim was not a stranger.[70] He also asserts that he should have been given a 1 on the item concerning employment and that there was unwarranted weight placed on "unrelated resolved convictions from twenty years ago not dealing with anything sexual or violent or indicating future risk." Petitioner also insisted that he has a large, healthy support system. While asserting his innocence regarding his most current conviction, he stated that he had completed several positive programs that reduce his risk.[71]

In addition to filing an appeal and speaking at the ECRC meeting, Petitioner filed a reply to the ECRC's current motion.[72] In his reply, Petitioner disputes the ECRC's characterization of Petitioner's criminal record. Petitioner objects to, for example, the ECRC's consideration of the allegations made against him by a minor in 2004 and two adult women in 2011, which did not result in criminal charges.[73] He argues that uncharged allegations are not the same as having "uncharged victims," the term used

[66] Ex. 3 at 16 (Risk Assessment Recommendation).
[67] *Id.* at 17.
[68] Ex. 9 (Audio Recording of ECRC meeting).
[69] Ex. 2 at 2 (Risk Assessment Report).
[70] Ex. 1 at 1 (Notice of Appeal); Ex. 9 (Audio Recording of ECRC meeting).
[71] Petitioner's Reply Mem. (July 8, 2022).
[72] *Id.*
[73] *Id.*

by the ECRC.[74] He also argues that the ECRC failed to acknowledge that at least one of his supervision violations, referenced in the ECRC's application of special concerns, was reversed and the court of appeals found that Petitioner should not have been found to have violated his release.[75] In short, Petitioner asserts his presumptive risk level should be 2 and that some of the special concerns are "not clearly substantiated."[76] Petitioner also questions how Dr. Backes and the ECRC could reach a conclusion contrary to Dr. Yang, pointing out that Dr. Yang interviewed him, but Dr. Backes did not.[77]

The ECRC acknowledged that Petitioner challenges his MnSOST-4.0 employment score[78] and disputes that his 2011 victim was a stranger to him.[79] The ECRC concedes that if either of Petitioner's factual allegations on those items were accurate, his presumptive score would be Risk Level 2, not 3.[80] However, the ECRC argues that even if Petitioner's presumptive risk level was Level 2, the ECRC would still unanimously assign him a Risk Level 3 because the five special concerns warrant that increase.[81] Because it is applying the presumptive risk level and because, even were the presumptive risk level lowered based on Petitioner's arguments, the ECRC would increase it based on special concerns, the ECRC asserts that Petitioner raises no issues of material fact and summary disposition is appropriate.[82]

VII. Analysis

A. MnSOST-4 Scoring

Petitioner's arguments against his assignment to Risk Level 3 are based on his contention that the scoring of the MnSOST-4.0 was not correct. He argues that his 2011 rape victim was not a stranger, and he should not have been scored as having raped a stranger.[83] If everything else remained the same, had he been scored a 0 for stranger victim, his score would have been 3.64, 81.00 percent and a presumptive 2.[84] However, the Minnesota Court of Appeals found that he told the police at the time of his arrest that he never had sex with the victim and that his girlfriend knew the victim. The court found both statements were lies. According to the court, the first lie was exposed by DNA evidence and the second by a recorded jail house phone call in which it was clear the two had never met.[85] The purpose of the ECRC review hearing and this appeal process is to determine on a case-by-case basis a Petitioner's appropriate risk level. This

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[74] *Id*.
[75] *Id*. at 12 (citing *Robinson v. State*, No. A07-2177, 2008 WL 4224623 (Minn. Ct. App. Sep. 16, 2008)).
[76] *Id*.
[77] *Id.*
[78] Ex. 2 at 6 (Risk Assessment Report).
[79] *Id*.
[80] *Id.*
[81] *Id.*
[82] ECRC Mem. at 1.
[83] Ex. 9 (Audio Recording of ECRC meeting).
[84] Ex. 2 at 6 (Risk Assessment Report).
[85] *Robinson*, 2013 WL 5508141, at *4.

proceeding is not an opportunity to revisit findings decided in prior cases and by higher courts. The fact that his victim was a stranger to him has been definitively determined, and there is no basis for holding a hearing to relitigate that fact.

Petitioner also argued that he should have been given a 1 for employment rather than 0. At the hearing, Dr. Backes explained his reasoning for scoring this item as 0. In summary, Dr. Backes concluded that, when not incarcerated, Petitioner does not have a stable, secure, and continuous employment pattern.[86] The record viewed as a whole and taken in the light most favorable to Petitioner supports Dr. Backes's conclusion and no facts were offered supporting a different score.

Further, even if Petitioner could somehow prove the item regarding stranger victims was incorrectly scored, thereby lowering his presumptive level to 2, the ECRC's assignment of Level 3 to Petitioner would not change. The ECRC found five special concerns applicable to Petitioner such that, as the committee explained, it would still have found Risk Level 3 to be appropriate.[87] For the same reason, even assuming Petitioner could prove that his employment history supports scoring the item as a 1, and thus a presumptive Risk Level 2, the ECRC application of Risk Level 3 to Petitioner would not change.

B. Special Concerns

The ECRC applied five special concerns to Petitioner.[88] Petitioner stated that "some" were incorrectly applied.[89] The first was special concern #1, which applies when the offender has a history of sexual offending after detection.[90] Petitioner did not dispute the application of this special concern, nor would it have been reasonable to do so. This special concern clearly applies because Petitioner's most recent conviction for first-degree criminal sexual conduct in 2012 followed a fourth-degree criminal sexual conduct conviction from 2002. The ECRC did not err in applying this special concern.

The ECRC applied special concern #3 which relates to a history of severe or gratuitous violence. This concern includes the use of a weapon, whether real or implied, and the use of force beyond that necessary to accomplish the offense, especially related to the individual's behavior during the offense.[91] Petitioner disputes that his behavior during the commission of his 2011 offense meets this standard.[92] However, the findings in the court's appellate decision, quoted above, conclusively support the ECRC's application of this special concern.

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[86] Ex. 9 (Audio Recording of ECRC meeting).
[87] ECRC Memo at 6-7; Ex. 3 at 17 (Risk Assessment Recommendation).
[88] Ex. 2 (Risk Assessment Report).
[89] Petitioner's Reply Mem. at 11.
[90] Ex. 2 at 7 (Risk Assessment Report); Ex. 6 (special concerns).
[91] Ex. 6 (special concerns).
[92] Petitioner's Reply Mem. at 13.

The ECRC applied special concern #4, which applies when an offender has a history of predatory offenses.[93] Petitioner did not respond to the application of this special concern in his reply memorandum, the ECRC properly applied this special concern because Petitioner was convicted of kidnapping his 2011 sexual-assault victim.[94]

The ECRC also applied special concern #2.[95] This special concern applies when an offender has a history of prior supervision failures.[96] Petitioner argued that the ECRC misstated the record when applying this concern. He stated that many of the supervision failures relied upon are over 18 years old, some did not result in convictions or even charges and "at least one was overturned."[97] However, Petitioner was released and returned to prison at least four times, one of which was for contact with minors.[98] The ECRC correctly applied this special concern but, even were it incorrectly applied, the ECRC could still rely on the other applicable special concerns to assign Petitioner Risk Level 3.[99]

Similarly, the ECRC applied special concern #5, which compares the nature of the offender's victim pool and includes stranger victims as one example.[100] Petitioner contends that his victim was not a stranger, but the court of appeals has already concluded that this assertion is false.[101] Therefore, the ECRC did not err in applying this special concern. Moreover, as noted above, the application of one special concern is sufficient to increase an offender's risk level.

Petitioner's score on the MnSOST-4.0 placed Petitioner in the presumptive Risk Level 3 range.[102] This score provides only a suggested or presumptive risk level, which the ECRC can increase or decrease based on individual circumstances, not taken into account by the actuarial tool.[103] By law, the ECRC must consider a number of factors in addition to the screening tool score when assigning a risk level, including: (1) the seriousness of the offense should the offender reoffend; (2) the offender's prior offense history; (3) the offender's characteristics; (4) the availability of community supports to the offender; (5) whether the offender has indicated, or credible evidence in the record indicates, that the individual will reoffend if released to the community; and (6) whether

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[93] Ex. 4 at 7 (ECRC Packet); Ex. 6 (special concerns).
[94] *See* Minn. Dep't of Corrections Policy No. 205.220 (Aug. 5, 2022) (stating that "predatory offense behavior . . . relates to the individual's behavior during the sex-related offense(s) and includes breaking into a house, stalking a victim, or abducting or attempting to abduct a victim").
[95] Ex. 3 at 7 (Risk Assessment Recommendation).
[96] Ex. 6 (special concerns).
[97] Petitioner's Reply Mem. at 12.
[98] Ex. 4 at 84 (ECRC Packet).
[99] *See In re the Risk Level Determination of Yeo*, No. 65-1100-36823, AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, at 24 (Minn. Office Admin. Hearings Feb. 4, 2022) (stating that "[t]he application of just one of these special concerns would be sufficient for the ECRC to increase Petitioner's risk level").
[100] Ex. 4 at 7-8 (ECRC Packet); Ex. 6 (special concerns).
[101] *Robinson*, 2013 WL 5508141, at *4.
[102] Ex. 3 at 10 (Risk Assessment Recommendation).
[103] *R.B.P.*, 640 N.W.2d at 354-56.

the offender demonstrates a physical condition that minimizes the risk of re-offense.[104] In addition, the ECRC has discretion to apply one or more special concerns to raise the presumptive risk level.[105]

The Community Notification Act provides that the ECRC's role is to assess, on a case-by-case basis, the public risk posed by predatory offenders who are about to be released from confinement.[106] Dr. Backes and the ECRC appropriately considered the statutory risk factors, as well as Petitioner's recent criminal conduct, and decided the presumptive risk level suggested by the MnSOST-4.0. accurately reflected the risk Petitioner poses. Furthermore, the ECRC believing that Petitioner's probable victim pool includes female strangers and female acquaintances noted that had he not scored in the presumptive 3 range special concerns would have been cited to support the recommended risk level.[107] Accordingly, the Administrative Law Judge concludes that the ECRC's Motion should be granted, and Petitioner's risk level assignment affirmed.

VIII. Conclusion

Petitioner has failed to raise a genuine issue of material fact related to the ECRC's risk level assignment and the ECRC is entitled to summary disposition as a matter of law. Therefore, the ECRC's Motion is **GRANTED**. Petitioner's appeal of his risk level determination is **DISMISSED,** and the assignment of Risk Level 3 is **AFFIRMED**.

B. J. C.

[104] Minn. Stat. § 244.052, subd. 3(d), (i), (g).
[105] Minn. Dep't of Corrections Policy No. 205.220 (Aug. 5, 2022); *see also R.B.P.*, 640 N.W.2d at 354.
[106] Minn. Stat. § 244.052, subd. 3(a).
[107] Ex. 3 at 16 (Risk Assessment Recommendation).