

*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-0638**

In the Matter of the Civil Commitment of:  
Allen Lashawn Pyron

**Filed September 2, 2008  
Affirmed  
Muehlberg, Judge\***

Dakota County District Court  
File No. 19-P9-07-006304

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Considered and decided by Lansing, Presiding Judge; Minge, Judge; and Muehlberg, Judge.

**UNPUBLISHED OPINION**

**MUEHLBERG**, Judge

Appellant challenges his commitment as a sexually dangerous person, arguing that (1) clear and convincing evidence does not support his commitment and (2) the 60-day review hearing did not afford him an opportunity to establish that a change in circumstances had occurred which would make commitment unwarranted. Because clear

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

and convincing evidence supports appellant's commitment as a sexually dangerous person, and because the 60-day review hearing afforded appellant an opportunity to present evidence of a change in his condition since the initial commitment hearing, we affirm.

## **FACTS**

Appellant Allen Pyron was born on April 4, 1983. He has an extensive history of sexually abusing adolescent boys, including instances of forced penetration. Appellant's first adjudication for a sex-related offense occurred in 1997 when he was 14 years old. Appellant entered the home of a boy he had abused earlier, put his hands around his throat, and penetrated him anally with his penis. Appellant eventually entered an admission for criminal sexual conduct in the third degree and was adjudicated a juvenile delinquent.

Appellant's first conviction as an adult for a sex-related offense was in 2005 for criminal sexual conduct in the third degree. During this offense, appellant forcibly penetrated a 15-year-old boy he met at a shelter for GLBT teens. Appellant, who was a volunteer at the shelter, received a stayed sentence of 21 months along with a term of probation lasting four years. He was also ordered to register as a sex offender and complete sex-offender treatment. Appellant's second conviction as an adult for a sex-related offense also occurred in 2005, for failure to register as a sex offender. He received a stay of imposition of sentence with five years' probation, and was ordered to serve 365 days in jail, with the possibility of a transfer to Alpha House for sex-offender treatment.

Appellant entered Alpha House on December 1, 2005 under the terms of his probation detailed above. But he was adversely terminated from the program on August 7, 2006 for engaging in sex with another male participant. A bench warrant was then issued, and appellant served the remainder of his sentence at MCF-Faribault. As the end of appellant's sentence approached, the petition to commit him as a sexually dangerous person (SDP) that is the source of this appeal was filed. When the initial petition for commitment was filed, appellant was incarcerated with a release date of June 11, 2007.

In addition to the offenses mentioned above, appellant has self-reported numerous other incidents of unlawful sexual conduct. Appellant, when he was between the ages of 11 and 14, reports having abused approximately 25 boys between the ages of eight and 16. This abuse began with his cousins, who he then manipulated into recruiting their friends for him to abuse. He claims to have abused his cousins 40 times over a four-year period. Appellant also reported that he has prostituted himself in the past.

On November 30, 2007, following an initial hearing, the district court ordered appellant committed as an SDP. After a review hearing on January 31, 2008, the district court ordered appellant's indeterminate commitment as an SDP pursuant to Minn. Stat. § 253B.02, subd. 18(c) (2006). In its order, the district court concluded that all of the procedural requirements for the hearing had been met, that an individualized treatment plan was not required at the hearing, and that commitment was the most appropriate and least restrictive alternative to provide treatment. This appeal follows.

## DECISION

### I.

On a petition for civil commitment under the Minnesota Commitment and Treatment Act, the state must prove the need for commitment by clear and convincing evidence. Minn. Stat. § 253B.18, subd. 1(a) (2006). We review the district court's factual findings under a clear-error standard. Minn. R. Civ. P. 52.01; *In re Joelson*, 385 N.W.2d 810, 811 (Minn. 1986). “Where the findings of fact rest almost entirely on expert testimony, the trial court’s evaluation of credibility is of particular significance.” *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). But the determination of whether the facts satisfy the statutory standard for civil commitment is a question of law subject to de novo review. *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994) (*Linehan I*).

An SDP is defined as a person who: (1) engaged in a course of harmful sexual conduct; (2) manifests 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(a) (2006). An SDP is subject to civil commitment only if the person’s disorder or dysfunction does not allow adequate control over sexual impulses and makes it “highly likely” that the person will reoffend. *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*).

Appellant argues that clear and convincing evidence does not support his commitment as an SDP.

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(a) (2006). There is a rebuttable presumption that criminal sexual conduct in the first through fourth degrees creates a substantial likelihood of serious physical or emotional harm. Minn. Stat. § 253B.02, subd. 7a(b). At a minimum, appellant’s conviction for criminal sexual conduct in the third degree establishes a course of harmful sexual conduct. This is especially true in this case, where appellant has self-reported a substantial number of incidents involving unlawful sexual behavior for which he has never been charged.

Appellant does not dispute that he has engaged in a course of harmful sexual conduct in the past.

2. *Sexual, personality, or other mental disorder or dysfunction.*

Appellant also does not directly<sup>1</sup> challenge the district court’s conclusion that “[t]here is clear and convincing evidence that [appellant] has manifested a ‘sexual, personality or other mental disorder,’ and that as a result of these disorders, [appellant] lacks adequate control over his sexually harmful behavior.” Supporting the district court’s conclusion is the expert testimony of Dr. Roger Sweet and Dr. Thomas Alberg. Dr. Sweet diagnosed appellant with antisocial personality disorder and histrionic traits.

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<sup>1</sup> Appellant challenges the credibility of the doctors, arguing that the district court “cannot find both doctors credible where differing testimony is presented as to the tools used to ‘guide’ their opinions.” Because this credibility challenge is based on doctors’ use of statistical tools, it will be discussed in the following section.

Dr. Alberg diagnosed appellant with antisocial personality disorder and narcissistic personality disorder.

3. *The likelihood of harmful sexual conduct in the future.*

Appellant does challenge the district court's conclusion that he is "highly likely" to engage in harmful sexual conduct in the future. There are six factors a court must consider when determining if it is "highly likely" that an offender will engage in future harmful sexual conduct:

- (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 Stone*, 711 N.W.2d 831, 840 (Minn. App. 2006) (citing *Linehan I*, 518 N.W.2d at 614), *review denied* (Minn. June 20, 2006). It is not necessary that all six factors weigh in favor of commitment. *See In re Linehan*, 557 N.W.2d 171, 178 (Minn. 1996) (*Linehan III*) (stating that the six-factor test does not "foreclose good faith attempts by the courts to isolate the most important factors in predicting harmful sexual conduct"), *vacated and remanded on other grounds*, 522 U.S. 1011, 118 S. Ct. 596 (1997). In regard to base-rate statistics, the Minnesota Supreme Court has stated that there is "no statutory or precedential support for the argument that actuarial methods or base rates are the sole permissible basis for prediction." *Id.*

The bulk of appellant's argument on this issue rests on criticisms that he has with the particular statistical tools employed by the testifying experts. Notably, appellant does not dispute that all of the risk prediction tools cited by the experts are commonly accepted risk prediction tools. But, even if this factor did weigh against commitment, the court-appointed experts also based their opinion on the remaining five factors and opined that appellant qualified as an SDP:

*Demographic characteristics*

Appellant is a 24-year-old male who has never been in a monogamous, stable relationship. He has a poor relationship history and a history of family instability. He was also abused as a child. In the words of one expert, appellant "has a number of demographic characteristics which would indicate a high likelihood of [reoffense]."

*History of violent behavior*

Appellant has an "very extensive history" of violent behavior and violent sex offenses. He has engaged in domestic violence against his partners. His first sex-offense conviction involved the use of force and threats.

*Sources of stress*

Appellant would face "significant" stress because, as a convicted sex offender, he would be required to register with the state. This would cause difficulty obtaining housing and employment. One expert, quoting a report from the Alpha treatment program, stated that appellant has yet to develop healthy coping strategies and will continue his lifestyle because "sex has served to distract him from his problems, provide him with occasional income and provide him with a connection to others."

*Similarity of past and present contexts*

Appellant would be “returning to an environment where he would continue to have access to his victim pool.” His environment would also be “similar to settings in which he has offended in the past.”

*Record of participation in sex-therapy programs*

Appellant has a “less than meritorious record with regard to sex offender treatment” programs. He has been terminated from numerous sex-offender programs, and has reoffended after being treated as a sex offender.

Appellant does not challenge any of these expert opinions in his brief; his focus is on the expert’s use of base-rate statistics. Considering that no factor is determinative, and that appellant challenges only one factor of the six-factor test, the district court’s conclusion that appellant is “highly likely” to reoffend is supported by clear and convincing evidence.

**II.**

The facility where an offender is initially committed is required by statute to submit a “treatment report” to the district court within 60 days of commitment. Minn. Stat. § 253B.18, subd. 2(a) (2006). Failure of the treatment facility to provide a treatment report within the 60-day window “shall not result in automatic discharge of the patient.” *Id.*, subd. 2(c). The focus of the 60-day review hearing is to determine whether there is “evidence of changes in the patient’s condition since the initial commitment hearing.” *In re Linehan*, 557 N.W.2d 167, 171 (Minn. 1996) (*Linehan II*), *vacated and remanded on*

*other grounds*, 502 U.S. 1011, 118 S. Ct. 596 (1997). The goal is not to reassess whether the underlying standards for commitment are met. *Id.*

Appellant challenges the treatment report provided to the district court by Minnesota Sex Offender Program (MSOP) because (1) it is “merely an endorsement of the trial court’s order without a substantial review of Appellant” and (2) “the report fails to provide the court with a description of treatment efforts and response to treatment by Appellant during hospitalization and Appellant’s individual treatment plan.”

Regarding appellant’s first argument that the MSOP treatment report is just an endorsement of the district court’s review, the statute on its face only requires that a treatment report is provided to the district court. *See* Minn. § 253B.18, subd. 2(a) (“A written treatment report shall be filed by the treatment facility with the committing court within 60 days after commitment.”); *see also In re Janckila*, 657 N.W.2d 899, 902 (Minn. App. 2003) (“In reviewing a commitment, we are limited to an examination of whether the district court complied with the requirements of the commitment act.”). But even assuming appellant’s argument had merit, and he points to no legal authority suggesting it does, the treatment report did expand beyond the district court’s review. At the very minimum, the report had an attachment containing updated records from appellant’s daily progress notes and the assessment summaries compiled during his time at MSOP.

Appellant’s second argument that the report does not specify a treatment plan for appellant is inaccurate. The MSOP report specifies that:

It is the treatment team’s recommendation that [appellant] enters and proceeds through the MSOP treatment program offered at the St. Peter and Moose Lake facilities.

The treatment team will determine specific placement in groups based upon [appellant's] need areas. It is recommended [appellant] address the goals as indentified in his individual treatment plan.

The MSOP report was accompanied at trial by the testimony of Dr. Katherine Mahaffey. Mahaffey was the report's author. When asked whether appellant had an individualized treatment plan, Mahaffey responded:

There is a General treatment plan, that recommends a general course of treatment. There is a movement . . . to tailor those treatment plans, so that they are more individualized.

And, so, based on the assessments that are continued, through these sixty days, and will continue on, in the treatment unit, he is currently on an individualized treatment plan.

But even if the MSOP did not specify an individualized treatment plan, appellant does not explain why one is required. Again, the text of the statute only calls for a treatment report. It does not require that the treatment report contain an individualized treatment plan. Minn. § 253B.18, subd. 2(a).

Furthermore, “[t]he treatment of patients is properly raised before a hospital review board and not before the committing court.” *In re Pope*, 351 N.W.2d 682, 683 (Minn. App. 1984). Like *Pope*, there is no provision in the statute that allows for a district court to monitor the treatment of a person committed as an SDP. As a result, appellant does not have the legal basis under the statutory framework to raise these issues now. Because none of appellant's challenges to the 60-day hearing have merit, and because appellant failed to present any evidence of a change in condition that would have

made his continued commitment unwarranted, the district court did not err in ordering his continued commitment.

**Affirmed.**