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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-414**

In the Matter of the  
Civil Commitment of:  
Richard Parnell Rucker.

**Filed August 6, 2012  
Affirmed  
Collins, Judge\***

Washington County District Court  
File No. 82-PR-09-3746

Gregory J. Schmidt, Bayport, Minnesota (for appellant Richard Parnell Rucker)

Peter Orput, Washington County Attorney, Richard D. Hodsdon, Assistant County  
Attorney, Stillwater, Minnesota (for respondent Washington County)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Collins,  
Judge.

**UNPUBLISHED OPINION**

**COLLINS, Judge**

The district court civilly committed Richard Parnell Rucker as a sexual psychopathic personality (SPP) and as a sexually dangerous person (SDP) under the Minnesota Commitment and Treatment Act, Minn. Stat. §§ 253B.01-24 (2010). On appeal from his indeterminate commitment, Rucker argues that the district court erred by

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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.

(1) concluding that he is highly likely to reoffend and (2) relying on dynamic factors, which change over time, given that appellant is scheduled to remain incarcerated until 2022 for his criminal convictions. Because the record supports the district court's conclusions, we affirm.

## **FACTS**

Rucker was initially civilly committed as a sexually dangerous person (SDP) and sexual psychopathic personality (SPP) on January 11, 2012. At the time, he was serving consecutive 144-month sentences for two convictions of first-degree criminal sexual conduct. His release date is December 2022; his sentences expire in 2026.

Rucker was convicted of fifth-degree criminal sexual conduct in 1994, for engaging in sexual intercourse with a fifteen-year-old girl. The child was a member of a church youth choir, and Rucker played in the church band. Rucker spent several weeks grooming the child; he took her to his apartment where they had "consensual" sexual intercourse. The victim reported that Rucker was aware of her age; he denied this and said that he thought she was 17 and that she looked much older. Rucker also stated that his intention was to help a troubled child. His version of events has evolved over time in an apparent attempt to minimize his culpability. Rucker was given a stay of imposition of sentence and was placed on probation for two years. He was ordered to attend the 18-hour NewStart Sexual Offender Program, but no records of this now defunct program were found. Rucker has both claimed and denied that he completed the program; he indicated that he did not find it helpful. He has received no other sex offender treatment.

In the interim between this first offense and those of which he is now convicted, Rucker worked at jobs associated with children. He was a special education assistant and a counselor at a YMCA, until he was discharged because of the 1994 conviction. He reported that he was employed with the Minneapolis School District from 1994 to 2002; there is at least one report that he inappropriately disciplined a child during this time, and some suggestion that he gave children rides in his own car, in violation of district policy. He worked with the National Youth Sports Program (NYSP) at the University of St. Thomas in 2004, but his contract was not renewed, in part because of concerns over his inappropriate conduct with female students. He was employed as an integration specialist with the South Washington County School District from May 2003 until the summer of 2005, working with an after-school program for at-risk students at Cottage Grove Junior High School. He was discharged in 2005, after several individuals raised concerns about his inappropriate conduct with female students. He was a cultural resource specialist for the Roseville School District from September 2005 to the spring of 2006. He was discharged from that position following his arrest on the current charges.

Rucker denies being fired from or disciplined at any employment, but other records show that he was the subject of an investigation in Minneapolis in 2001 for sexual misconduct with a female student and for other conduct that made female students uncomfortable; South Washington County placed him on a no-student-contact status after noting concerns about his inappropriate behavior with female students; St. Thomas did not renew his contract because of “inappropriate or overly friendly interactions with female students.” In the Minneapolis incident, a student reported that Rucker made

overtures to her and her friends that made them uncomfortable; the child's mother reported that her older daughter had had a sexual relationship with Rucker while she was a 14-year old student at Four Winds School. As that child was a runaway whose whereabouts were unknown, no charges were filed against him. In Roseville, a female student whom Rucker counseled reported inappropriate touching.

Rucker's current crimes of conviction stem from conduct that occurred while he worked for the South Washington County School District during the 2003-04 school year as a facilitator for an after-school program. During that time, he met victims A.K. and N.L., both 13-14 years old. Both girls were dealing with problems at home during that school year and had been referred to the after-school program for assistance. Rucker engaged in grooming behavior with both children, later initiating sexual contact and sexual intercourse with both. Rucker, who was 41 years old, "dated" both children at the same time. The victims estimated that they had at least 70 incidents of sexual contact or intercourse with Rucker over the course of a year to 18 months. The two victims found out that each was sexually active with Rucker through communications on My Space. Rucker's sexual conduct with A.K. ended after she moved away from the district; after A.K. discovered that N.L. also had a relationship with appellant, A.K. told her father, who contacted the police.

Rucker was charged with two counts of first-degree criminal sexual conduct and two counts of second-degree criminal sexual conduct and was convicted by a jury of all four counts. He appealed his convictions to this court, and we affirmed the convictions. *See State v. Rucker*, 752 N.W.2d 538 (Minn. App. 2008), *review denied* (Minn. Sept. 23,

2008). He received consecutive 144-month sentences on the two first-degree sexual conduct convictions.

In 2009, Washington County petitioned to have Rucker civilly committed. The district court was provided with reports and testimony of four experts: Dr. Michael Thompson, who did an initial recommendation to proceed with civil commitment; and Drs. Peter Meyers, Katheryn Cranbrook, and Harry Hoberman, who were appointed as forensic examiners. Rucker refused to be interviewed by any of the expert witnesses, who relied on earlier interviews from 1994 and 2006.

All three of the trial experts agreed that Rucker has a mental disorder, Paraphilia NOS and more specifically, hebephilia, which is an attraction to post-pubescent, underage females. They all agreed that there is some controversy about this diagnosis because many adult males have an attraction to females of this age, but again, they broadly agreed that Rucker acted on this attraction in a way that most adult males do not. They also agreed that he has a Personality Disorder NOS, probably a narcissistic disorder. The experts agreed that the actuarial tests previously performed on Rucker and those that could be extrapolated from previous interviews show a low to moderate risk of re-offending, but their conclusions as to the validity of this testing varied. Dr. Cranbrook stated that Rucker should be ranked as an average sexual offender, not one necessarily highly likely to reoffend. Dr. Meyers opined that despite the low to moderate ranking, Rucker is highly likely to reoffend because he lacks insight into his offense cycle, continues to deny that he committed the offenses, and placed himself in risky situations despite whatever amount of court-ordered sex offender treatment he received. Dr.

Hoberman also agreed that Rucker lacked insight either because he failed to acknowledge the problem or participate in treatment, or, if he did actually attend the NewStart program, because he continued to follow his sexual impulses despite receiving treatment. He commented that, although Rucker was not violent per se, he “demonstrated high density sexually violent behavior,” a specific reference to the number of sexual acts he engaged in and his behavior in positioning himself by employment to take advantage of his selected victim pool, adolescent females. All three experts commented on Rucker’s lack of candor, frequent lies or misstatements about his personal history, lack of empathy for the victims or acknowledgement of fault, and his manipulative and grooming behaviors. And his versions of the incidents underlying his three convictions evolved over time.

The district court concluded that Rucker meets the standard for commitment as an SDP and an SPP. On appeal, Rucker raises a limited issue: whether there is clear and convincing evidence that he is highly likely to reoffend, and, as a related matter, whether the decision is premature, given that he has ten years left to serve on his criminal sentence.

## **D E C I S I O N**

A petition for civil commitment as an SDP or SPP must be proved by clear and convincing evidence. *In re Civil Commitment of Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006), *review denied* (Minn. June 20, 2006); Minn. Stat. § 253B.18, subd. 1(a), .185, subd. 1(a). We review the district court’s factual findings for clear error, *Stone*, 711 N.W.2d at 836, and the district court’s commitment decision to ensure compliance with

the statutory standards for commitment. *In re Civil Commitment of Navratil*, 799 N.W.2d 643, 647 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011). We view the record in the light most favorable to the findings, giving due deference to the district court's opportunity to make credibility determinations. *Id.* This is particularly true when the district court relies on expert testimony. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995).

The district court concluded that appellant met the standard for civil commitment as both an SDP and an SPP. An SDP is a person who (1) engaged in a course of harmful sexual conduct, as defined by the statute; (2) has a sexual, personality, or other mental disorder; and (3) because of this disorder, is likely to engage in acts of harmful sexual conduct. Minn. Stat. § 253B.02, subd. 18(c) (2010). This third requirement has been interpreted to require proof that a person is “highly likely” to engage in acts of harmful sexual conduct. *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*). An SPP is a person who (1) has a defect of behavior that renders him not responsible for personal conduct in sexual matters; (2) has exhibited a habitual course of misconduct in sexual matters; and (3) demonstrates an utter lack of ability to control his sexual impulses, making him likely to reoffend and a danger to others. Minn. Stat. § 253B.02, subd. 18(b) (2010). The utter lack of ability to control one's sexual impulses is essentially the equivalent of a finding that an offender is highly likely to engage in acts of harmful sexual conduct. *See In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994) (*Linehan I*) (stating that likelihood to engage in future dangerous behavior, in the context of the SPP statute, is “predicated on an utter lack of ability to control sexual impulses”).

Rucker does not challenge the first two factors of each of these standards; rather, he asserts that the county has not demonstrated by clear and convincing evidence that he is either highly likely to reoffend or has an utter lack of ability to control his sexual impulses, making him highly likely to reoffend in the future. As part of this argument, Rucker contends that the petition here is premature because he has 10 years remaining to serve on his sentence.

The district court considers various factors when determining if an offender is highly likely to engage in future harmful conduct, including: (1) the offender's demographic characteristics; (2) the offender's history of violent behavior; (3) base-rate or actuarial statistics for offenders with a similar background; (4) sources of stress in the offender's likely environment; (5) similarity of present or future conditions to those in which the offender committed violence in the past; and (6) participation in sex offender or other treatment programs. *Linehan I*, 518 N.W.2d at 613.<sup>1</sup> The same factors can be used to determine if an offender utterly lacks the ability to control his sexual impulses. *Id.*

(1) *Demographic Characteristics*: Rucker will be almost 60 years old at his release date. According to the experts, this could indicate a lower risk of re-offense. As to other demographic characteristics, Rucker has generally failed to complete his education, despite claims to the contrary; he has a fractured family life, fathering six children with five different women; he claims to have raised his oldest son but appears to have had

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<sup>1</sup> Although *Linehan I* dealt with the issue of commitment as an SPP, other cases have used the *Linehan I* factors to assess the likelihood of reoffending for SDP commitments. See, e.g., *Stone*, 711 N.W.2d at 840.

little contact with the other children and has not provided support for them; at the time of his incarceration, he claimed to have a stable relationship with an adult female, but he met this female when she was a teenager and roughly in the demographic group that he targets for abuse. His employment, other than a longer period with the Minneapolis school district, was sporadic, and he was discharged from most of the jobs; he sought employment in circumstances that permitted him to have maximum contact with his target population, despite having a conviction from 1994 that served as a warning that this was improvident. The fact that he will have been incarcerated and will most likely be unable to obtain employment associated with children after his release may mitigate concerns. But the fact that he continued to seek employment involving adolescent females after his first conviction is troubling. At best, the demographic factors are neutral on the question of whether Rucker is highly likely to reoffend.

(2) *History of Violent Behavior:* Rucker has not been physically violent in his sexual misconduct; rather, he accomplished his ends through grooming and manipulation. His convictions for first-degree criminal sexual conduct are presumptively harmful, causing “serious physical or emotional harm.” Minn. Stat. § 253B.02, subd. 7a (defining “harmful sexual conduct”). One victim, A.K., had a psychiatric hospitalization as a result of Rucker’s conduct. Rucker spent significant time and effort grooming his victims, who all were emotionally vulnerable adolescents. In addition to the conduct towards the three victims that led to his convictions, he exhibited consistent grooming behavior with other adolescent females; he was repeatedly discharged from employment for such conduct. Grooming conduct supports a finding of impulsive behavior that demonstrates an utter

lack of ability to control sexual impulses; while the grooming conduct is deliberate, the fact that the offender is unable to control his impulses to engage in the conduct suggests an utter lack of control. See *In re Preston*, 629 N.W.2d 104, 111 (Minn. App. 2001); *In re Bieganowski*, 520 N.W.2d 525, 530 (Minn. App. 1994), *review denied* (Minn. Oct. 27, 1994). This factor supports the conclusion that Rucker is highly likely to reoffend or is utterly unable to control his sexual impulses.

(3) *Statistical/Actuarial Assessments*: The various actuarial instruments or base-rate statistics supported a low-to-moderate risk finding; Dr. Cranbrook considered these findings to place Rucker within the range of average, rather than egregious, sex offenders. This militates against commitment. The district court, however, was persuaded by Dr. Hoberman's testimony that the actuarial instruments are conservative in their estimates by failing to take into consideration the high number of unreported sexual assaults. Dr. Hoberman also pointed out that the actuarial instruments tend to compress convictions or assaultive behavior together; that is, Rucker's convictions for first-degree criminal sexual conduct against two separate victims fail to take into account that he had more than 70 sexual contacts with the two victims. Rucker relies heavily on the experts' determination that he has a low-to-moderate risk of reoffending, but this single factor is not determinative. See *Navratil*, 799 N.W.2d at 649 (stating that no single factor is determinative of issue of future likelihood of reoffending, including actuarial statistics).

(4) *Sources of Stress*: The experts agreed that convicted sex offenders face a stressful environment after release, because of the difficulties of obtaining housing and employment. Rucker has no apparent community support and limited contact with his

family, as well as a problematic employment history. This factor supports a finding that Rucker is highly likely to reoffend.

(5) *Similarity of Present/Future Conditions with Past:* With more than ten years to go before he is released, it is difficult to assess whether Rucker will be in circumstances similar to those when he offended. He will be more closely supervised, and it is unlikely that he will be allowed access to his target population. On the other hand, he experienced negative consequences for his sexual behavior, including the 1994 conviction and discharge from several jobs, but nevertheless continued to groom adolescent females and to sexually offend. The effect of aging or sex offender treatment cannot be definitively determined ten years prior to release. With these unknowns, this factor is neutral.

(6) *Participation in Treatment Programs:* Rucker is either a completely untreated sex offender, because it is not clear that he participated in a sex offender program, or an offender who failed in treatment. None of the experts were able to find any information about the program that Rucker claimed to have attended in 1994. At one point, Rucker claimed that he had been asked to leave for being uncooperative and failing to take responsibility for his offense; even if he did complete the program, as he has also claimed, it was only 18 hours of programming, which was inadequate to address his problems. Rucker has not taken advantage of sex offender programming at the correctional facility, despite having been incarcerated since 2007. Dr. Hoberman considered him to have a poor prognosis for treatment because he lacked insight, empathy for the victims, and interest in treatment. This factor supports a finding that Rucker is highly likely to reoffend.

We have carefully reviewed the record and conclude that the district court's findings are supported by clear and convincing evidence and are not clearly erroneous; further, the findings support the district court's determination that Rucker is highly likely to reoffend and utterly lacks the ability to control his sexual impulses. We recognize that some of the dynamic factors may change during Rucker's incarceration, but nothing in the commitment act requires the state to wait to file a commitment petition until completion of a criminal sentence. In fact, when a person is convicted of first-degree criminal sexual conduct, the district court must make a preliminary recommendation about civil commitment at the time of sentencing. Minn. Stat. § 609.1351 (2010). On the record before us, the district court did not err by indeterminately committing Rucker as an SPP and an SDP.

**Affirmed.**