OAH 82-1100-36251

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF CORRECTIONS

In the Matter of the Risk Level Determination of Cedric S. Anderson

ORDER GRANTING MOTION FOR SUMMARY DISPOSITION

This matter is pending before Administrative Law Judge Barbara J. Case pursuant to a Notice and Order for Review of Risk Level Assignment filed with the Office of Administrative Hearings on July 25, 2019.

Edwin Stockmeyer, Assistant Attorney General, represents the End-of-Confinement Review Committee (ECRC). Jon E. Paulson, Paulson Law Firm, PLLC, represents Cedric S. Anderson (Petitioner).

On August 9, 2019, the ECRC filed a Motion for Summary Disposition and served Petitioner with the Motion by U.S. Mail. Petitioner responded on August 27, 2019, and the record closed.

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

ORDER

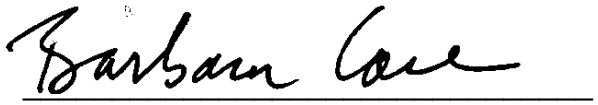
IT IS ORDERED THAT:

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: September 23, 2019



BARBARA J. CASE
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 244.052, subd. 6(c) (2018), 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 (2018).

MEMORANDUM

Petitioner has appealed his assignment by the ECRC of Risk Level 3 under the Minnesota Community Notification Act (Act).[1] The ECRC seeks summary disposition, arguing that Petitioner has not identified an error in the ECRC's determination of his risk assessment. The Administrative Law Judge determines that no material disputes of fact exist and that the record supports the ECRC's motion. Therefore, the Administrative Law Judge grants the ECRC's motion and dismisses this appeal.

I. Minnesota Community Notification Act

Under the Act, individuals convicted of certain criminal offenses are considered "predatory offenders." Law enforcement agencies in the area where a predatory offender resides, expects to reside, is employed, or is regularly found, are to disclose information about the predatory offender that is "relevant and necessary to protect the public and to counteract the offender's dangerousness."[2] 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."[3]

The Act establishes three risk levels to which predatory offenders are assigned.[4] Each risk level is associated with a different degree of community notification.[5] If an offender is assigned 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.[6] Risk Level 2 permits additional notice to individuals and groups, such as schools and daycares, likely to be victimized by the offender.[7] 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).[8]

---

[1] Minn. Stat. § 244.052 (2018).
[2] Minn. Stat. §§ 243.166, subd. 1b, 244.052, subd. 4(a) (2018).
[3] Minn. Stat. §§ 243.166, subd. 1b, 244.052, subd. 4(a).
[4] Minn. Stat. § 244.052, subd. 4(b).
[5] *Id.*
[6] *Id.*, subd. 4(b)(1).
[7] *Id.*, subd. 4(b)(2).
[8] *Id.*, subd. 4(b)(3).

Every predatory offender confined in a Minnesota state correctional or treatment facility must be evaluated by the ECRC at the facility prior to release.[9] The ECRC must assess the public risk posed by each predatory offender and determine the appropriate risk level assignment.[10]

In doing so, the ECRC is required to apply six risk factors identified in Minn. Stat. § 244.052, subd. 3(g). The 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 to the offender; (5) whether the offender has indicated or credible evidence in the record indicates that he will reoffend if released to the community; and (6) whether the offender demonstrates a physical condition that minimizes the risk of re-offense.[11] This list is not exclusive.[12]

In addition, the ECRC must score an offender using a risk assessment tool, and the score from that tool is translated into a presumptive risk level.[13] 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.[14]

After considering the offender's score on the risk assessment tool, any mitigating factors or special concerns, and the statutory risk factors, the ECRC assigns the offender a final 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."[15]

A risk level assignment applies for a minimum of ten years.[16] During that time, the level of notice corresponding to the assigned risk level must be given every time the offender changes residence.[17] An offender may seek a reassessment of the assigned risk level three years after the initial risk assessment, and may renew the request once every two years following subsequent denials.[18]

Additionally, a predatory offender assigned Risk Level 2 or Risk Level 3 may seek administrative review of the ECRC's determination.[19] 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

---

[9] *Id.*, subd. 3.
[10] *Id.*
[11] *Id.*, subd. 3(g).
[12] *Id.*
[13] *Id.*, subd. 2.
[14] Minnesota Department of Corrections (DOC) Policy No. 205.220 (Apr. 16, 2013); *see also In re the Risk Level Determination of R.B.P.*, 640 N.W.2d 351, 354 (Minn. Ct. App. 2002).
[15] Minn. Stat. § 244.052, subd. 3(f).
[16] Minn. Stat. § 243.166, subd. 6(a) (2018).
[17] *Id.*, subd 3 (2018).
[18] *Id*.
[19] Minn. Stat. § 244.052, subd. 6(a).

the review committee's determination."[20] The decision of the Administrative Law Judge is final and subject to appellate judicial review.[21]

II. Petitioner's Offenses and Incarceration History

On April 26, 2001, Petitioner was charged with one count of first-degree criminal sexual conduct and one count of third-degree criminal sexual conduct two days after forcing his girlfriend, N.J.G., to have sex with him. [22] N.J.G. had refused Petitioner's sexual advances because she was bleeding heavily from a recent miscarriage.[23] Petitioner also hit N.J.G. and police officers found her laying face down on the floor of Petitioner's apartment, hyperventilating.[24] Petitioner ultimately pleaded guilty to domestic assault and was sentenced to 90 days in jail.[25]

On February 4, 2005, while incarcerated at the Northwest Regional Corrections Center, Petitioner and two other inmates, J.D.M. and D.T.J., assaulted B.B.[26] Petitioner and J.D.M. pulled down B.B.'s pants, while D.T.J. grabbed B.B.'s penis "and pulled on it a few times."[27] Petitioner was charged with fourth-degree criminal sexual conduct.[28] In the same complaint, Petitioner was charged with one count of aggravated robbery, four counts of tampering with a witness, one count of harassing conduct, and five counts of fifth-degree assault.[29] The conduct underlying these charges occurred on several different days.[30] Petitioner ultimately pleaded guilty to one count of fifth-degree assault.[31]

Petitioner was released from prison in May 2010.[32] Prior to his release, Jeff Olson prepared a risk assessment recommendation for Petitioner.[33] At the time, Petitioner's Minnesota Sex Offender Screening Tool-Revised (MnSOST-R) score placed him presumptively in Risk Level 2.[34] Mr. Olson recommended that the ECRC assign Petitioner to Risk Level 1, noting that Petitioner has "one sex-related offense and there is no other evidence of sexual acting out."[35] Nonetheless, the ECRC assigned Petitioner to Risk Level 2.[36]

---

[20] *Id.*, subd. 6(c).
[21] Minn. Stat. §§ 14.63, 244.052, subd. 6(c).
[22] Exhibit (Ex.) 1 at 243-45 (criminal complaint).
[23] *Id.* at 243-44.
[24] *Id.*
[25] *See* Ex. 1 at 129 (Pre-Sentence Investigation).
[26] Ex. 1 at 206 (criminal complaint).
[27] *Id.*
[28] *Id.* at 210.
[29] *See id.* at 208-12.
[30] *See id.*
[31] *See* Ex. 1 at 129 (Pre-Sentence Investigation).
[32] *See* Ex. 1 at 141 (Risk Assessment Recommendation); *see also* Ex. 1 at 139 (Risk Assessment Report).
[33] Ex. 1 at 141-42 (Risk Assessment Recommendation).
[34] *Id.* at 141.
[35] *Id.* at 142.
[36] Ex. 1 at 138 (Risk Assessment Report).

On August 6, 2013, Petitioner met J.M.A. and her sister at a bar and bought them drinks.[37] Later, Petitioner went back to J.M.A.'s apartment, where J.M.A. rejected Petitioner's sexual advances.[38] J.M.A. excused herself to the bathroom, but Petitioner followed her in and locked the door.[39] Petitioner then began to "throw [J.M.A.] around the bathroom" and "vaginally penetrated her with his penis on the counter."[40] Petitioner put a towel around J.M.A.'s neck to strangle her and was so forceful that he broke a mirror above the vanity.[41] Police photographed abrasions on J.M.A.'s neck, along with other scratches, bruising, and the broken mirror.[42] During the assault, J.M.A.'s sister heard J.M.A. crying out for help and tried to get into the bathroom, but the door was locked and barricaded.[43] Petitioner was charged with first-degree criminal sexual conduct.[44] On October 1, 2014, Petitioner entered an Alford plea to attempted first-degree assault, and the district court sentenced Petitioner to 95 months in prison.[45]

Beyond these incidents, Petitioner has an otherwise extensive criminal history, including convictions of assault, theft, damage to property, violations of orders for protection, DWI, burglary, reckless driving, and criminal vehicular homicide.[46]

III. Petitioner's Risk Level Assignment

In preparation for Petitioner's release from prison, Terrel Backes, a licensed psychologist with the DOC,[47] prepared a Risk Assessment Recommendation memorandum for Petitioner.[48] The memorandum, dated May 31, 2019, was provided to the ECRC at Minnesota Correctional Facility-Moose Lake (MCF-Moose Lake).[49]

Dr. Backes scored the Minnesota Sex Offender Screening Tool-3.1.2 (MnSOST-3.1.2) for Petitioner.[50] According to this tool, Petitioner's predicted probability of sexual recidivism is 16.92 percent,[51] which places him in the presumptive Risk Level 3 category.[52] Dr. Backes also considered the statutory risk factors.[53] Dr. Backes noted that Petitioner has three "ECRC offenses," including the 2005 prison incident with B.B.[54]

---

[37] *See* Ex. 1 at 135 (criminal complaint).
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.* at 134.
[45] Ex. 1 at 127 (Pre-Sentence Investigation).
[46] Ex. 1 at 128-29 (Pre-Sentence Investigation).
[47] Ex. 4 (Curriculum Vitae for Terrel Backes).
[48] Ex. 1 at 9 (Risk Assessment Recommendation).
[49] *Id*.
[50] Ex. 1 at 18 (MnSOST-3.1.2).
[51] *Id.*
[52] Ex. 1 at 10, 16 (Risk Assessment Recommendation).
[53] *Id.* at 5-8.
[54] *See id.* at 9-10.

Dr. Backes noted the applicability of three special concerns to Petitioner's risk level assignment, despite Petitioner's presumptive level being the highest available.[55] First, Dr. Backes cited Special Concern 2, which applies when an offender has two or more unsuccessful chemical dependency treatment interventions because the offender quit, was terminated, or refused chemical dependency treatment, and/or a history of relapse following treatment completion.[56] Dr. Backes noted that Petitioner has a history of relapse following participation in chemical dependency treatment programming.[57] In addition, Petitioner did "not achieve his programming recommendation relating to chemical dependency treatment during his current period of confinement."[58]

Dr. Backes also applied Special Concern 5, which applies when an offender has a history of severe or gratuitous violence (e.g., murder, manslaughter, assault, etc.).[59] Dr. Backes noted that Petitioner's ECRC offense "involved forced penile-vaginal penetration, as well as [Petitioner] physically assaulting and strangling the adult female victim."[60]

Finally, Dr. Backes applied Special Concern 9, which applies when the nature of the offender's victim pool suggests a need for broader notification of the public than that indicated by the Community Notification Risk Level associated with the offender's score on the MnSOST-3.1.2.[61] Dr. Backes explained that Petitioner has been charged for three separate sexual-misconduct offenses; the victims were a male peer, an adult female acquaintance, and an adult female whom Petitioner met just prior to commission of the offense.[62] Therefore, Dr. Backes concluded that Petitioner has "offended against a relatively broad victim pool."[63]

Based on Petitioner's score on the risk assessment tool, consideration of the statutory risk factors, and application of special concerns, Dr. Backes recommended assigning a Risk Level 3 to Petitioner.[64] Dr. Backes noted that "[d]uring his current period of confinement, [Petitioner] was discharged unsuccessfully from the MSOP-DOC Site, the most intensive treatment programming focused on sexual offending offered within the DOC."[65] Dr. Backes further stated, "As [Petitioner] was unsuccessful in treatment programming focused on sexual offending, he did not participate in chemical dependency treatment programming, and he scores higher than 93% of his peers on the MnSOST-3.1.2, this author sees no compelling reason to depart from the Community Notification Risk Level indicated by the relevant actuarial tool."[66]

---

[55] *Id.* at 17.
[56] *Id.*; Ex. 3 at 1 (definitions of special concerns).
[57] Ex. 1 at 17 (Risk Assessment Recommendation).
[58] *Id.*
[59] *Id.*; Ex. 3 at 1 (definitions of special concerns).
[60] Ex. 1 at 17 (Risk Assessment Recommendation).
[61] *Id.* (Risk Assessment Recommendation); Ex. 3 at 2 (definitions of special concerns).
[62] Ex. 1 at 17 (Risk Assessment Recommendation).
[63] *Id.*
[64] *Id.* at 16.
[65] *Id.*
[66] *Id.*

The ECRC at MCF-Moose Lake convened on June 17, 2019, to address Petitioner's risk level recommendation.[67] Petitioner attended the meeting and had an opportunity to be heard by the committee prior to their vote.[68] Petitioner's attorney, Jon Paulson, appeared by phone.[69] Mr. Paulson argued that Petitioner's assignment to Risk Level 3 is erroneous because he did not plead guilty to any sex crimes.[70] Petitioner denied each of the sexual allegations against him and stated that he does not "need" to rape women.[71] At the conclusion of the meeting, the ECRC unanimously voted to assign Petitioner a Risk Level 3. Because Petitioner was a presumptive Risk Level 3 and there was no level to which the ECRC could deviate upwards, the ECRC did not apply the applicable special concerns.[72] On June 3, 2019, Petitioner submitted a Notice of Appeal from the ECRC's risk level determination.[73]

IV. Motion for Summary Disposition

A. Summary Disposition Standard

Summary disposition is the administrative law equivalent of summary judgment.[74] 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.[75] The Office of Administrative Hearings follows the summary judgment standards developed in the state district courts when considering motions for summary disposition of 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 factual issues exist.[76] In other words, the Administrative Law Judge does not weigh the evidence; instead, the judge views the facts and evidence in a light most favorable to the non-moving party.[77]

The moving party has the initial burden to show the absence of any genuine issue regarding any material fact.[78] A fact is material if its resolution will affect the outcome of the case.[79] If the moving party meets the initial burden, then the burden shifts to the non-moving party to prove the existence of any genuine issue of any

---

[67] Ex. 1 at 5 (Risk Assessment Report).
[68] *Id.* at 6; Ex. 5 (audio recording of ECRC meeting).
[69] Ex. 1 at 6 (Risk Assessment Report).
[70] Ex. 5 (audio recording of ECRC meeting).
[71] *Id.*
[72] Ex. 1 at 3 (Risk Assessment Report).
[73] Ex. 1 at 1 (Notice of Appeal).
[74] *Pietsch v. Minnesota Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004); *see also* Minn. R. 1400.5500(K) (2017).
[75] *See 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).
[76] *See, e.g., DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).
[77] *See Ostendorf v. Kenyon*, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984).
[78] *See Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).
[79] *See O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996) (citing *Zappa v. Fahey*, 245 N.W.2d 258, 259-260 (Minn. 1976)).

material fact.[80] A genuine issue is not a "sham or frivolous" one and it cannot rely on mere allegations or denials.[81] Instead, a genuine issue requires presentation of specific facts demonstrating a need for resolution in a hearing or trial.[82]

Summary disposition cannot be used as a substitute for a hearing or trial on the facts of a case.[83] Thus, summary disposition is only proper when no fact issues need to be resolved.[84]

B. Analysis

The ECRC seeks summary disposition of this case, contending that Petitioner fails to "allege any material facts suggesting error in assigning him a risk level three."[85] After reviewing the ECRC's motion and Petitioner's claims, the Administrative Law Judge concludes that the ECRC's Motion for Summary Disposition should be granted.

Petitioner first argues he should not be classified as a predatory offender and assigned a risk level because the ECRC "incorrectly labeled domestic assault as a predatory offense."[86] According to Petitioner, he "does not have any convictions for sex offenses. He has pleaded to domestic violence and . . . attempted assault."[87] But Petitioner's argument ignores the clear language of Minnesota law, which requires registration if a person is charged with any of the predatory offenses delineated in the statute and subsequently convicted of the predatory offense "*or another offense arising out of the same set of circumstances*" as the predatory offense.[88] To arise out of the same set of circumstances, the circumstances underlying both the conviction offense and the charged predatory offense must overlap with regard to time, location, persons involved, and basic facts.[89]

In this case, Petitioner was charged with first-degree criminal sexual conduct and third-degree criminal sexual conduct, both predatory offenses, but he ultimately pleaded guilty to domestic assault.[90] The charge and the ultimate conviction arose out of the same set of circumstances: Petitioner forcing his girlfriend to have sex with him despite her protestations.[91] The fact that Petitioner was not convicted of the criminal sexual conducts charges does not affect application of the registration requirement to Petitioner's conviction for domestic assault arising from the same set of

---

[80] *See Thiele,* 425 N.W.2d at 583.
[81] *See Highland Chateau, Inc. v. Minnesota Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984) (citing *A & J Builders, Inc. v. Harms*, 179 N.W.2d 98, 103 (Minn. 1970)).
[82] *See* Minn. R. Civ. P. 56.05.
[83] *See Sauter*, 70 N.W.2d at 353.
[84] *See id*.
[85] Mem. in Support of the ECRC's Mot. For Summary Disposition of Risk Level Administrative Review at 5 (Aug. 9, 2019).
[86] Response to Mot. for Summary Disposition at 1.
[87] *Id.* at 5.
[88] Minn. Stat. § 243.166, subd. 1b(a)(1) (emphasis added).
[89] *State v. Lopez*, 778 N.W.2d 700, 706 (Minn. 2010).
[90] Ex. 1 at 243-45 (criminal complaint).
[91] *Id.* at 243-44.

circumstances.[92] Therefore, the law requires the ECRC to assign Petitioner a risk level upon his release from prison.[93]

Petitioner next argues that the "ECRC determination made erroneous decisions based on his alleged lack of cooperation with sexual offender 'treatment' and with his lack of completion of chemical dependency treatment. Both of these treatments will be mandatory upon his release and a condition of his parole."[94] Petitioner insists that "[h]e is willing to go to treatment on both as a condition of his parole."[95] His willingness to attend treatment now is irrelevant. According to the MnSOST-3.1.2 coding rules, "[t]his item measures whether offenders have completed both sex offender and chemical dependency treatment while incarcerated for the index offense/index sentence cluster."[96] Because it is undisputed that Petitioner failed to complete both sex offender and chemical dependency treatment, there is no material dispute pertaining to this factor.

Petitioner also challenges the facts underlying his convictions noting that he has "been considered a sexual predator for one allegation in 2001 that the alleged victim has since recanted."[97] However, it is not the role of the ECRC "to test the state's evidence" when assigning a risk level.[98] On appeal, the Administrative Law Judge is bound by the facts contained in the records.[99] In this matter, the records show Petitioner pleaded guilty to domestic assault after forcing his girlfriend to have sex with him, which triggered the statutory requirement that Petitioner be assigned a risk level.[100]

Similarly, Petitioner challenges the ECRC's reliance on his 2005 fifth-degree assault conviction, stating that "[w]hile Petitioner held the alleged victim, another inmate pulled on the victim's penis. [Petitioner] didn't have knowledge that this would happen. The charge included this allegation, but it wasn't proved."[101] The Administrative Law Judge acknowledges that the record does not clearly establish that Petitioner's assault conviction arose out of the same set of circumstances as the sexual incident because the complaint alleges numerous assaults over the course of several days.[102] Therefore, it is not properly considered a predatory offense.[103] However, this conclusion is immaterial because the MnSOST-3.1.2 scoring considers predatory offense *sentences*, of which Dr. Backes noted none.[104] Rather, Dr. Backes included Petitioner's 13 felony offense sentences when scoring the MnSOST-3.1.2, and Petitioner does not allege error pertaining to that determination.

---

[92] The same analysis applies to Petitioner's conviction for attempted first-degree assault.
[93] *See* Minn. Stat. § 244.052.
[94] Response to Mot. for Summary Disposition at 2.
[95] *Id.*
[96] Ex. 2 at 17.
[97] Response to Mot. for Summary Disposition at 5.
[98] *In re the Risk Level Determination of R.L.,* 2010 WL 2813451 at *3 (Minn. Ct. App. July 20, 2010).
[99] *Id.*
[100] *See* Ex. 1 at 129 (Pre-Sentence Investigation).
[101] Response to Mot. for Summary Disposition at 3.
[102] Ex. 1 at 206-13 (criminal complaint).
[103] *See* Minn. Stat. §§ 244.052, subd. 1(5), 243.166, subd. 1b.
[104] Ex. 1 at 18 (MnSOST-3.1.2).

Petitioner next implies that the ECRC erred because Dr. Backes "didn't do a personal interview."[105] Petitioner asks: "How could a professional evaluate someone he deemed the worst of the worst without even a cursory interview [?]"[106] But there is no requirement in the predatory offender statute that the DOC psychologist meet in-person with each predatory offender prior to making a risk level recommendation to the ECRC.[107] Rather, the statute grants access to Petitioner's underlying data, including medical data, court services data, corrections data, and private criminal history data, "for the purpose of its assessment and to defend the committee's risk assessment determination."[108] Therefore, the lack of a personal interview does not indicate error in the process. Moreover, Petitioner was given an opportunity to be heard at the ECRC meeting.[109]

Lastly, Petitioner contends that "the ECRC committee seemed intent to punish [Petitioner] rather than simply register him."[110] The record does not support this assertion. Petitioner's MnSOST-3.1.2 score placed him presumptively in Risk Level 3.[111] And, pursuant to DOC guidelines, Petitioner must be assigned to that risk level "unless the ECRC determines mitigating circumstances exist warranting a lower community notification risk level assignment."[112] But not only did Dr. Backes not apply mitigating factors, he identified three special concerns that would apply. Petitioner nonetheless contends that he has completed several classes, which show that he "is on his way to a productive life once released."[113] Although the Administrative Law Judge commends Petitioner's willingness to attend classes and improve his life, this does not constitute a mitigating circumstance for risk level assignment.[114] Petitioner may seek a reassessment of this assigned risk level in three years, and may renew the request once every two years following subsequent denials.[115]

V. Conclusion

Petitioner has failed to raise a genuine issue of material fact related to the ECRC's risk level assignment. Therefore, the ECRC's Motion for Summary Disposition is **GRANTED**. Petitioner's appeal of his risk level determination is dismissed and assignment of Risk Level 3 is **AFFIRMED**.

B. J. C.

---

[105] Response to Mot. for Summary Disposition at 3.
[106] *Id.*
[107] *See* Minn. Stat. § 244.052.
[108] *See id.*, subd. 3(c).
[109] See Ex. 5 (audio recording of ECRC meeting).
[110] Response to Mot. for Summary Disposition at 1.
[111] Ex. 1 at 18 (MnSOST-3.1.2); DOC Policy No. 205.220.
[112] DOC Policy No. 205.220.
[113] Response to Mot. for Summary Disposition at 7.
[114] DOC Policy No. 205.220.
[115] Minn. Stat. § 243.166, subd. 3.