

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF CORRECTIONS

In the Matter of the Risk Level
Determination of Nicholas P. Odenthal

**ORDER DISMISSING RISK LEVEL
APPEAL AS MOOT**

This matter is pending before Administrative Law Judge James E. LaFave.

Angela Helseth Kiese, Assistant Attorney General, represents the Minnesota Department of Corrections End-of-Confinement Review Committee (ECRC). Nicholas P. Odenthal (Petitioner) represents himself, without counsel.

The ECRC filed a Motion to Dismiss Risk Level Appeal as Moot (Motion) filed on May 27, 2019. Petitioner did not submit a response to the Motion. The record in this matter closed on June 15, 2021, the deadline for Petitioner's response.

Based upon the files and records in this case, pursuant to Minn. Stat. § 244.052, subd. 6 (2020), and Minn. R. 1400.5500, .6600 (2021), and for the reasons expressed in the accompanying Memorandum, the Administrative Law Judge issues the following:

ORDER

1. The ECRC's Motion is **GRANTED**.
2. Petitioner's appeal is **DISMISSED AS MOOT**.

Dated: September 13, 2021


JAMES E. LAFAVE
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 244.052, subd. 6(c) (2020), 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 (2020).

MEMORANDUM

I. Introduction

The ECRC requests that Petitioner's appeal of the risk level assigned to him be dismissed as moot following Petitioner's civil commitment as a sexually dangerous person (SDP) and sexual psychopathic personality (SPP). Upon a review of the record, the Administrative Law Judge agrees that this matter is moot and grants the ECRC's Motion.

II. Minnesota Community Notification Act

A brief discussion of the framework established by the Minnesota Community Notification Act (Act) is necessary to provide context for an analysis of the ECRC's request. 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 "relevant and necessary to protect the public and to counteract the offender's dangerousness."¹ The extent of the information disclosed, and the persons to whom disclosure is made, 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."²

The Act establishes three different risk levels, numbered as Risk Level 1, 2, and 3, to which predatory offenders are assigned.³ Each risk level contemplates a different degree of community notification, with Risk Level 3 providing for the greatest degree of notice to the community.⁴ Every predatory offender confined in a Minnesota state correctional or treatment facility must be assessed by the ECRC prior to release.⁵ The ECRC must determine the public risk posed by each predatory offender upon release and assign the appropriate risk level.⁶ In doing so, the ECRC must consider an offender's score on a risk level tool, six non-exclusive statutory factors, and whether any aggravating or mitigating circumstances apply.⁷

A predatory offender assigned Risk Level 2 or Risk Level 3 may seek administrative review of the ECRC's determination.⁸ In such a review, the Administrative Law Judge considers "whether the end-of-confinement review committee's risk assessment determination was erroneous and, based on this decision, shall either

¹ Minn. Stat. § 244.052, subd. 4(a) (2020); *see also* Minn. Stat. § 243.166, subd. 1b (2020).

² Minn. Stat. § 244.052, subd. 4(a).

³ *Id.*, subd. 4(b) (2020).

⁴ *Id.*

⁵ *Id.*, subd. 3 (2020).

⁶ *Id.*

⁷ *See id.*, subd. 2, 3(g) (2020); Minnesota Department of Corrections (DOC) Policy No. 205.220 (Apr. 28, 2020); *see also In re the Risk Level Determination of R.B.P.*, 640 N.W.2d 351, 354 (Minn. Ct. App. 2002).

⁸ Minn. Stat. § 244.052, subd. 6(a).

uphold or modify the review committee's determination."⁹ The decision of the Administrative Law Judge is final and subject to appellate judicial review.¹⁰

III. Factual Background

Petitioner's background and criminal history are fully set forth in the Finding of Fact, Conclusions of Law and Order for Indeterminate Commitment as an SDP and SPP¹¹, which are hereby adopted. Petitioner's criminal history includes a 2005 conviction for second degree criminal sexual conduct and a 2018 conviction for two counts of third degree criminal sexual conduct.¹²

IV. Assignment of Risk Level 3

In January of 2020, Petitioner was incarcerated at the Minnesota Correctional Facility-Faribault (MCF-Faribault), with an anticipated release date of June 23, 2020.¹³ Dr. Shelley Leutschafft prepared a risk assessment recommendation for Petitioner, dated January 14, 2020.¹⁴ Dr. Leutschafft recommended assignment of Risk Level 3.¹⁵

The ECRC met on March 9, 2020, to consider Petitioner's risk level assignment.¹⁶ Petitioner attended the ECRC's meeting and was heard prior to its decision.¹⁷ The ECRC unanimously assigned Petitioner Risk Level 3.¹⁸ Petitioner appealed the risk level assignment on March 19, 2020.¹⁹

V. Civil Commitment of Petitioner

Cass County sought civil commitment for Petitioner pursuant to a petition filed on June 16, 2020.²⁰ After a bench trial, the district court in Cass County issued an order for civil commitment on May 24, 2021.²¹ The court found clear and convincing evidence that Petitioner met the criteria for commitment as both an SDP and SPP.²² The court also concluded that Petitioner requires confinement in a secure facility for purposes of public safety, that the Minnesota Sex Offender Program (MSOP) could provide the necessary level of security, and that Petitioner had not demonstrated any suitable alternative placement exists.²³ Therefore, the court ordered that a warrant of

⁹ *Id.*, subd. 6(c).

¹⁰ Minn. Stat. §§ 14.63, 244.052, subd. 6(c).

¹¹ Ex. 4.

¹² Ex. 3 at 4.

¹³ *Id.* at 1.

¹⁴ *Id.* at 1-6.

¹⁵ *Id.* at 4.

¹⁶ Ex. 1 at 1.

¹⁷ *Id.* at 1-2.

¹⁸ *Id.* at 3.

¹⁹ Ex. 1.

²⁰ Ex. 4 at 1.

²¹ *Id.* at 116.

²² *Id.* at 114-116.

²³ *Id.* at 115.

commitment would issue committing Petitioner to the MSOP for an indeterminate period.²⁴

VI. Analysis

The doctrine of mootness “seeks to ensure that a sufficient personal interest continues to exist” in connection with litigation and that a court retains the ability to “redress an injury through coercive relief.”²⁵ With limited exceptions, a matter becomes moot when a decision on the merits is no longer necessary, or if an award of effective relief is no longer possible.²⁶

In *In re the Risk Level Determination of J.V.*, the Minnesota Court of Appeals concluded that an appeal of a risk level determination by a predatory offender is rendered moot by an order for civil commitment of the offender.²⁷ The court reasoned that upon an offender’s commitment to a residential facility, such as a secure treatment facility, community notification as to the offender’s risk level is prohibited.²⁸ The court also noted that, upon an offender’s release from a treatment facility, a new ECRC meeting would occur to assign the offender a risk level and that this subsequently assigned risk level could be challenged through an administrative review.²⁹ As such, once an order for civil commitment is issued, no justiciable controversy remains related to the existing risk level determination.³⁰

The decision in *J.V.* is determinative here. Petitioner is the subject of an order for civil commitment and, as a result, he is confined in the MSOP, a secure treatment center.³¹ No community notification will be made regarding his risk level due to this placement.³² Petitioner will undergo another ECRC process upon his discharge from the MSOP.³³ Petitioner’s administrative appeal of his risk level determination by the ECRC is now moot. Under Minn. R. 1400.5500(K), dismissal of a contested case is appropriate when the dispute has become moot. Therefore, the Administrative Law Judge dismisses this matter as moot.

²⁴ *Id.* at 116.

²⁵ *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 321 (Minn. Ct. App. 2007).

²⁶ *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015).

²⁷ 741 N.W.2d 612, 613 (Minn. Ct. App. 2007), *review denied* (Minn. Feb. 19, 2008); *see also In re the Risk Level Determination of W.E.W.*, No. A11-784, 2011 WL 6015360, at *2-3 (Minn. Ct. App. Dec. 5, 2011) (affirming dismissal of request for review of risk level assignment as moot, when offender had been civilly committed); *In re the Risk Level Determination of P.L.*, No. A10-887, 2011 WL 69145, at *4-5 (Minn. Ct. App. Jan. 11, 2011) (recognizing *J.V.* as binding precedent, and declaring appeal of risk level assignment by civilly committed offender was moot).

²⁸ *J.V.*, 741 N.W.2d at 615; *see also* Minn. Stat. § 244.052, subd. 4(b)(3).

²⁹ *See J.V.*, 741 N.W.2d at 616; Minn. Stat. § 244.052, subd. 1, 3 (2018).

³⁰ *See J.V.*, 741 N.W.2d at 616.

³¹ Ex. 2 at 28.

³² Minn. Stat. § 244.052, subd. 4(b)(3).

³³ The Court of Appeals considered whether an offender must be afforded another ECRC process upon release from a secure treatment facility in *P.L.*, stating that the decision in *J.V.* requires a new ECRC assessment in this circumstance. 2011 WL 69145, at *3-4.

VII. Conclusion

Upon Petitioner's civil commitment, his risk level appeal became moot. Therefore, the ECRC's Motion is **GRANTED**, and Petitioner's appeal is **DISMISSED**.

J. E. L.