

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

In the Matter of the Risk Level  
Determination of Jeremy V. Breezee

**ORDER GRANTING  
MOTION FOR SUMMARY DISPOSITION**

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

John D. Gross, Assistant Attorney General, represents the End-of-Confinement Review Committee (ECRC). Jeremy V. Breezee (Petitioner) represents himself, without legal counsel.

On August 31, 2021, the ECRC filed a Motion for Summary Disposition (Motion). The ECRC personally served Petitioner on September 2, 2021. Petitioner filed a Response on September 14, 2021. The record closed on September 16, 2021, which was the deadline for responses.

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 is **GRANTED**.
2. The Petitioner's appeal is **DISMISSED**.
3. Petitioner's assignment of Risk Level 3 is **AFFIRMED**.

Dated: December 14, 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 designated Petitioner a Risk Level 3 under the Minnesota Community Notification Act (Act).<sup>1</sup> Petitioner appealed. The ECRC argues that it should be granted summary disposition because no issues of material fact exist, and Petitioner has not met his burden to show that the ECRC erred in making his risk level assignment. Based upon a review of the Motion and the record, the Administrative Law concludes that the Motion should be granted.

### II. Petitioner's Background

Petitioner, a 40-year-old man, is required to register as a predatory offender because he pleaded guilty to Third Degree Criminal Sexual Conduct in Ramsey County District Court in 2012, after being charged with one count each of First, Second and Third Degree Criminal Sexual Conduct.<sup>2</sup> He was sentenced to 171 months.<sup>3</sup> According to the ECRC, he is expected to be released from the Faribault facility of the Minnesota Department of Corrections (DOC) on January 10, 2022.<sup>4</sup>

Petitioner's criminal sexual conduct plea arose from the following facts. Late in the evening of May 5, 2007, A.M.C., an adult female, accompanied Petitioner to buy marijuana.<sup>5</sup> Petitioner proceeded with A.M.C. to a local park where he parked the car.<sup>6</sup> He told A.M.C. he had a friend waiting for him on the other side of the park.<sup>7</sup> While walking in the middle of a baseball field, Petitioner hit A.M.C. in the head, grabbed her hair from behind and pushed her down.<sup>8</sup> He pulled down A.M.C.'s pants and underwear and forcibly engaged in penile-vaginal penetration against her.<sup>9</sup> A.M.C. reported the sexual assault lasted three-to-five minutes.<sup>10</sup> Following the assault, Petitioner returned to his car leaving A.M.C. in the park.<sup>11</sup> A.M.C. sought help by going to a nearby house.<sup>12</sup> She was taken by law enforcement to the hospital where a sexual assault

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<sup>1</sup> Minn. Stat. § 244.052 (2020).

<sup>2</sup> Exhibit (Ex.) 3 at 1 (Risk Assessment Recommendation).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.* at 1.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

evidence kit was performed, the results of which indicated the DNA profile matched Petitioner.<sup>13</sup>

Additionally, Petitioner has been charged with two other sex related offenses. In August of 2003, Petitioner was charged with misdemeanor Sex with a Child in Pierce County, Wisconsin.<sup>14</sup> In 2003, Petitioner was also charged with First Degree Criminal Sexual Conduct in Ramsey County, Wisconsin.<sup>15</sup> In that case the alleged 17-year-old victim was developmentally delayed.<sup>16</sup>

**A.** Petitioner's juvenile history includes convictions for:

- Second degree assault in 1995;
- Fifth degree assault in 1997;
- Fifth degree assault in 1998; and
- Fifth degree assault also in 1998.<sup>17</sup>

**B.** Petitioner was convicted of the following misdemeanors as an adult:

- Evading arrest in 2001;
- Theft of property in 2005;
- Violation of order for protection in 2005;
- Violation of a domestic abuse no contact order in 2007; and
- Falsely reporting a crime in 2010.<sup>18</sup>

**C.** Petitioner's adult felony record includes convictions for:

- Theft in 2003;
- Second degree assault – dangerous weapon in 2006;
- Domestic assault by strangulation in 2007;
- Domestic assault 2011;
- Violation of a domestic abuse no contact order in 2012; and
- Third degree criminal sexual conduct in 2012.<sup>19</sup>

### **III. Procedural History**

In preparation for Petitioner's release, Shelley Leutschafft, Ph.D., a licensed psychologist with the DOC, prepared a risk assessment recommendation for Petitioner.<sup>20</sup> Dr. Leutschafft scored the Minnesota Sex Offender Screening Tool

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Ex. 3 (Risk Assessment Recommendation).

(MnSOST)-4 for Petitioner.<sup>21</sup> Petitioner's predicted probability of sexual recidivism, 9.31 percent, places him in the presumptive Risk Level 3 range.<sup>22</sup>

Dr. Leutschaft's recommendation discussed the statutory factors found in Minn. Stat. § 244.052, subd. 3(g). Dr. Leutschaft recited Petitioner's offense history and analyzed his potential dangerousness of reoffense, offender characteristics, support, evidence of intent to reoffend, and physical condition.<sup>23</sup>

Petitioner's MnSOST- 4 score placed him in the presumptive Risk Level 3 range, and Dr. Leutschaft recommended that the ECRC follow the presumptive level and assign Petitioner Risk Level 3.<sup>24</sup> Dr. Leutschaft did not apply any special concerns because the presumptive risk level was recommended.<sup>25</sup>

The ECRC convened on August 9, 2021, to address Petitioner's risk level assignment.<sup>26</sup> Petitioner attended the meeting and was heard by the committee prior to their vote.<sup>27</sup>

Petitioner told the ECRC that he had obtained over 44 certificates from the programs he completed during his incarceration.<sup>28</sup> Petitioner went on to say that he was part of Restorative Justice, that he has done drug treatment and one year of aftercare mentoring.<sup>29</sup> Petitioner explained he has a relapse prevention plan in place and family support to financially secure housing.<sup>30</sup> He also has employment prospects after his release with a thrift store and Polar Plastics.<sup>31</sup> Petitioner did not understand why he was being considered for a risk level 3 when he had completed his programing.<sup>32</sup>

At the conclusion of the meeting, the ECRC voted by unanimous decision to assign Petitioner a Risk Level 3.<sup>33</sup> The ECRC's Risk Assessment Report stated that "this assignment is in accordance with the presumptive risk level and based on the total score."<sup>34</sup> The ECRC went to commend Petitioner "on his positive strives, making good use of his time."<sup>35</sup> On August 9, 2021, Petitioner submitted his appeal of the ECRC's risk level determination,<sup>36</sup> and this contested case ensued.

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<sup>21</sup> Ex. 3a. (MnSOST-4 scoring sheet).

<sup>22</sup> *Id.*; Ex. 3 at 5 (Risk Assessment Recommendation).

<sup>23</sup> Ex. 3 at 2-6 (Risk Assessment Recommendation).

<sup>24</sup> *Id.* at 5.

<sup>25</sup> *Id.* at 6.

<sup>26</sup> Ex. 2 (Risk Assessment Report).

<sup>27</sup> *Id.* at 2; Ex. 7 (audio recording of ECRC meeting).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Ex. 2 at 2 (ECRC Risk Assessment Report).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Ex. 1 (Notice of Appeal).

#### IV. Community Notification Act

Minnesota law provides that individuals convicted of certain criminal offenses are considered “predatory offenders” and are subject to the Act.<sup>37</sup> Under the Act, law enforcement agencies in the area where a predatory offender resides, expects to reside, is employed, or is regularly found, must disclose information “relevant and necessary to protect the public and to counteract the offender’s dangerousness.”<sup>38</sup> The extent of the disclosure, 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.”<sup>39</sup>

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.<sup>40</sup> If an offender is assigned Risk Level 1, information about the offender may be given to local law enforcement agencies as well as victims and witnesses related to the offender’s criminal history.<sup>41</sup> Risk Level 2 permits additional notice to groups such as schools, child care facilities, and individuals likely to be victimized by the offender.<sup>42</sup> Risk Level 3 permits notice to be given to any community member whom the offender is likely to encounter, unless law enforcement determines public safety might be compromised by the disclosure or more limited disclosure is necessary to protect the identity of the offender’s victim(s).<sup>43</sup> Every predatory offender confined in a Minnesota state correctional or treatment facility must be assessed by the ECRC prior to release and assigned a risk level based upon the degree of risk to the public that the offender poses.<sup>44</sup>

The ECRC assesses each offender using a variety of tests and tools. Under Minn. Stat. § 244.052, subd. 3(g), the ECRC must apply six risk factors to the offender: (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 reoffense.<sup>45</sup> This list is not exclusive.<sup>46</sup>

The ECRC also must score the predatory offender using a risk assessment scale.<sup>47</sup> The offender’s score translates into a presumptive risk level to be considered

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<sup>37</sup> See Minn. Stat. §§ 243.166, subd. 1b, 244.052, subd. 4(a) (2020).

<sup>38</sup> Minn. Stat. § 244.052, subd. 4(a).

<sup>39</sup> *Id.*

<sup>40</sup> See *id.*, subd. 4(b).

<sup>41</sup> *Id.*, subd. 4(b)(1).

<sup>42</sup> *Id.*, subd. 4(b)(2).

<sup>43</sup> *Id.*, subd. 4(b)(3).

<sup>44</sup> *Id.*, subd. 3.

<sup>45</sup> *Id.*, subd. 3(g).

<sup>46</sup> *Id.*

<sup>47</sup> See *id.*, subd. 2.

by the ECRC. The ECRC, in its discretion, may deviate downward from the presumptive risk level by applying mitigating factors or may increase the risk level based upon special concerns.<sup>48</sup> Based upon these considerations, the ECRC assigns a final risk level to the predatory offender. It 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.”<sup>49</sup>

A predatory offender assigned Risk Level 2 or Risk Level 3 may seek administrative review of the ECRC’s determination within 14 days of receiving notice of the risk level assignment.<sup>50</sup> The administrative review is conducted by an Administrative Law Judge at the Office of Administrative Hearings and is subject to the contested case rules.<sup>51</sup> On review, “the administrative law judge shall decide whether the end-of-confinement review committee’s risk assessment determination was erroneous and, based on this decision, shall either uphold or modify the review committee’s determination.”<sup>52</sup> The decision of the Administrative Law Judge is final and subject to appellate judicial review.<sup>53</sup> A predatory offender may also ask the ECRC to reassess the assigned risk level three years after the initial risk assessment, and may renew the request once every two years following subsequent denials.<sup>54</sup>

## **V. Legal Standard for Summary Disposition**

Summary disposition is the administrative law equivalent of summary judgment.<sup>55</sup> 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.<sup>56</sup> 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.<sup>57</sup> The Administrative Law Judge does not weigh the evidence;<sup>58</sup> instead, the judge views the facts and evidence in a light most favorable to the non-moving party.<sup>59</sup>

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<sup>48</sup> Minnesota Department of Corrections 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).

<sup>49</sup> Minn. Stat. § 244.052, subd. 3(f).

<sup>50</sup> *Id.*, subd. 6(a).

<sup>51</sup> *Id.*, subd. 6(d). The contested case rules are found at Minn. R. 1400.5010-.8401 (2021).

<sup>52</sup> Minn. Stat. § 244.052, subd. 6(c).

<sup>53</sup> Minn. Stat. §§ 14.63, 244.052, subd. 6(c).

<sup>54</sup> Minn. Stat. § 244.052, subd. 3(i).

<sup>55</sup> *Pietsch v. Minn. Bd. of Chiropractic Exam’rs*, 683 N.W.2d 303, 306 (Minn. 2004); *see also* Minn. R. 1400.5500(K).

<sup>56</sup> *See Sauter v. Sauter*, 244 Minn. 482, 484, 70 N.W.2d 351, 353 (1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. Ct. App. 1985).

<sup>57</sup> *See DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).

<sup>58</sup> *See id.*

<sup>59</sup> *See Ostendorf v. Kenyon*, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984).

The moving party has the initial burden to show the absence of any genuine issue regarding any material fact.<sup>60</sup> A fact is material if its resolution will affect the outcome of the case.<sup>61</sup> 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.<sup>62</sup> A genuine issue is not a “sham or frivolous” one,<sup>63</sup> and it cannot rely on mere allegations or denials.<sup>64</sup> Instead, a genuine issue requires presentation of specific facts demonstrating a need for resolution in a hearing or trial.<sup>65</sup>

Summary disposition cannot be used as a substitute for a hearing or trial on the facts of a case.<sup>66</sup> Thus, summary disposition is only proper when no fact issues need to be resolved.<sup>67</sup>

## **VI. Analysis**

Petitioner does not challenge Dr. Leutschaf’s scoring of the MnSOST-4. The Administrative Law Judge reviewed the scoring of the assessment tool and concludes that it was scored correctly, and that Petitioner’s presumptive assignment is Risk Level 3. The ECRC argues that summary disposition is appropriate because Petitioner has not challenged the scoring of the MnSOST-4 or alleged a genuine issue of material fact.

Petitioner filed a Notice of Appeal<sup>68</sup> and a letter together with supporting documents in response to the ECRC’s Motion.<sup>69</sup> In his Notice of Appeal Petitioner argues the ECRC’s risk level determination is wrong because he believes the ECRC “didn’t consider the positive programing [he has] done.”<sup>70</sup> In his Response the Petitioner points out that:

- he has done a lot to better himself.
- he as a solid release plan: he intends to stay with his mother until he has saved enough money to move out, and
- he has a plan to work with a therapist to help with his mental health issues.<sup>71</sup>

Attached to his Response, Petitioner included six letters of support, documentation of his interest in Project Soar, a list of 12 family members and friends who were approved to visit him while incarcerated, an 11-page Re-offense Prevention Plan, and

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<sup>60</sup> See *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).

<sup>61</sup> See *O’Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).

<sup>62</sup> See *Thiele*, 425 N.W.2d at 583.

<sup>63</sup> See *Highland Chateau, Inc. v. Minn. Dep’t of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984).

<sup>64</sup> See *DLH*, 566 N.W.2d at 71.

<sup>65</sup> See Minn. R. Civ. P. 56.05.

<sup>66</sup> See *Sauter*, 244 Minn. at 485, 70 N.W.2d at 353.

<sup>67</sup> See *Id.*

<sup>68</sup> Ex. 1 (Notice of Appeal).

<sup>69</sup> Petitioner Response Letter (Sept. 3, 2021) (Response).

<sup>70</sup> Ex. 1 (Notice of Appeal).

<sup>71</sup> Response at 1.

documentation of his floor covering training.<sup>72</sup> Petitioner argues he has the three “pillars” to keep him from returning to prison: (1) employment; (2) support; and (3) a place to live.<sup>73</sup> Petitioner argues that considering the material he submitted, together with his three pillars, that his risk level should be lowered to a Risk level 2.<sup>74</sup>

The ECRC maintains that Petitioner’s appeal does not raise issues that would defeat its Motion. The Administrative Law Judge agrees. None of Petitioner’s arguments suggest the ECRC erred in its risk level assignment. Although it is commendable that Petitioner is working to better himself, that he has support of friends and family, that he has the prospects of a job and a good place to live, the issues in this appeal are narrow. The issues are limited to the evidence of errors in the scoring of the MnSOST- 4, and application of statutory factors and special concerns.

In this proceeding, the record reflects that Dr. Leutschaft correctly scored the MnSOST-4, which suggested a presumptive Risk Level 3; that Dr. Leutschaft recommended Risk Level 3 for Petitioner based on the MnSOST-4; and that the ECRC followed Dr. Leutschaft’s recommendation.<sup>75</sup> Petitioner’s Notice of Appeal and his Response to the ECRC’s Motion do not raise any legal issues that preclude summary disposition.

## VII. Conclusion

Petitioner has not shown that a genuine issue of material fact exists related to the ECRC’s risk level assignment, and the Department has established that it is entitled to judgment as a matter of law. Therefore, the ECRC’s Motion is **GRANTED**, and Petitioner’s Risk Level 3 assignment is **AFFIRMED**.

The Administrative Law Judge reminds Petitioner that he may request the ECRC to reassess his risk level assignment after three years have elapsed since the ECRC’s meeting on December 14, 2020.<sup>76</sup> If the request is denied, the Petitioner may renew the request once every two years following subsequent denials.<sup>77</sup>

J. E. L.

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<sup>72</sup> See Response attachments.

<sup>73</sup> *Id.* at 2.

<sup>74</sup> *Id.*

<sup>75</sup> Exs. 2 (Risk Assessment Report), 3 (Risk Assessment Recommendation).

<sup>76</sup> Minn. Stat. § 244.052, subd. 3(i).

<sup>77</sup> *Id.*