

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Risk Level **ORDER GRANTING MOTION FOR**
Determination of Joseph H. Specht **SUMMARY DISPOSITION**

This matter is before Administrative Law Judge Barbara J. Case pursuant to a Motion for Summary Disposition (Motion) filed on November 14, 2023, by the Department of Corrections' (Department) End of Confinement Review Committee (ECRC or Committee). The ECRC personally served Joseph H. Specht (Petitioner) on November 14, 2023.¹ The record closed on December 6, 2023, the extended due date for Petitioner's response to the motion.²

Lisa Jones, Assistant Attorney General, appears on behalf of the ECRC. Petitioner appears on his own behalf without legal counsel.

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

Dated: December 28, 2023



BARBARA J. CASE
Administrative Law Judge

¹ Affidavit of Daniel Besser.

² Additional time allowed to accommodate potentially longer mailing times due to Petitioner's incarceration.

NOTICE

Pursuant to Minn. Stat. § 244.052, subd. 6(c) (2022), 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 (2022).

MEMORANDUM

I. Introduction

On October 6, 2023, the ECRC assigned Petitioner a Risk Level 3 by unanimous decision.³ His presumptive Risk Level is 3.⁴ Petitioner appeals the risk level assigned to him by the ECRC under the Minnesota Community Notification Act (Act).⁵ The ECRC moves for summary disposition, contending that Petitioner has not identified an error in the ECRC's assignment of his risk level and that no genuine disputes of material fact exist that would require a hearing.⁶ Based upon a review of the Motion and the record, the Administrative Law Judge concurs and affirms Petitioner's risk level assignment.

II. The Minnesota Community Notification Act

Minnesota law provides that individuals convicted of certain criminal offenses are considered "predatory offenders" and are subject to the Minnesota Community Notification Act (Act).⁷ The Act requires law enforcement agencies in the area where a predatory offender resides, expects to reside, is employed, or is regularly found, to disclose information "relevant and necessary to protect the public and to counteract the offender's dangerousness."⁸ 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."⁹

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.¹⁰ If an offender is assigned to a 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.¹¹ Risk Level 2 permits additional notice to individuals and groups, such as schools and daycares, likely to be victimized by the offender.¹²

³ Ex. 2 (ECRC Risk Assessment Report).

⁴ Ex. 3 (ECRC Risk Assessment Recommendation).

⁵ Ex 1 (Notice of Appeal); see also Minn. Stat. § 244.052 (2022).

⁶ Mem. in Support of the ECRC's Mot. for Sum. Disposition of Risk Level Admin. Review (Nov. 14, 2023) (ECRC Mem.).

⁷ Minn. Stat. §§ 243.166, subd. 1b, 244.052, subd. 4(a) (2022).

⁸ Minn. Stat. § 244.052, subd. 4(a).

⁹ *Id.*

¹⁰ See *Id.*

¹¹ *Id.*, subd. 4(b)(1).

¹² *Id.*, subd. 4(b)(2).

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).¹³

Every predatory offender confined in a Minnesota state correctional or treatment facility must be assessed by an ECRC prior to release.¹⁴ The ECRC considers the public risk posed by each predatory offender upon release and determines the appropriate risk level assignment.¹⁵

In doing so, the ECRC is required by law to apply six risk factors set forth in Minn. Stat. § 244.052, subd. 3(g). These 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 available to the offender; (5) whether the offender has indicated, or credible evidence in the record indicates, that the individual will reoffend if released to the community; and (6) whether the offender demonstrates a physical condition that minimizes the risk of re-offense.¹⁶ This list is not exclusive.¹⁷

In addition, the ECRC must use a risk assessment scale in determining the offender's risk assessment score and risk level.¹⁸ The score from the scale translates into a presumptive risk level.¹⁹ 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.²⁰

After considering the offender's score on the risk assessment scale, the impact of any mitigating factors or special concerns, and the statutory risk factors, the ECRC assigns the offender to a 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."²¹

A risk level assignment applies for a minimum of ten years.²² During that time, the level of notice corresponding to the assigned risk level must be given every time the offender changes residence.²³ An offender may seek a reassessment of the assigned

¹³ *Id.*, subd. 4(b)(3).

¹⁴ *Id.*, subd. 3.

¹⁵ *Id.*

¹⁶ *Id.*, subd. 3(g).

¹⁷ *Id.*

¹⁸ *Id.*, subd. 3(d)(i).

¹⁹ *Id.*, subd. 2.

²⁰ Minn. Dep't of Corrections Policy No. 205.220 (Aug. 5, 2022); see also *In re the Risk Level Determination of R.B.P.*, 640 N.W.2d 351, 354 (Minn. Ct. App. 2002).

²¹ Minn. Stat. § 244.052, subd. 3(f).

²² *Id.*, subd. 4(f); see also Minn. Stat. § 243.166, subd. 6(a) (2022).

²³ See Minn. Stat. § 244.052, subd. 4(f).

risk level after three years have passed and may renew the request once every two years following subsequent denials.²⁴

Additionally, a predatory offender assigned to Risk Level 2 or Risk Level 3 may seek administrative review of the ECRC's determination.²⁵ 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 the review committee's determination.²⁶ The decision of the judge is final, subject to appellate judicial review.²⁷

III. Undisputed Facts

A. Petitioner's Background

Petitioner is a 39-year-old-man required to register as a predatory offender due to his April 18, 2018, conviction of Second-Degree Criminal Sexual Conduct as well as his 2003 adjudication for Third-Degree Criminal Sexual Conduct.²⁸ In 2018, the court found Petitioner had engaged in penile-vaginal penetration with a 14-year-old girl in a bathroom of a community pool.²⁹ On August 28, 2003, Petitioner was adjudicated as delinquent for Third-Degree Criminal Sexual Conduct when he had sexual contact with a ten-year-old girl. He was placed on probation, ordered to complete a sex offender treatment program and required to comply with predatory offender registration.³⁰

On October 29, 2003, Petitioner was scheduled to start outpatient sex offender treatment groups, but he denied his offense during his first group and failed to attend the next two sessions.³¹ His probation agent filed a violation report for Petitioner's failure to attend the group, failure to keep his appointments with the agent, and driving after license suspension with expired plates.³²

In November 2003, Petitioner was convicted of Violating a Restraining Order.³³ Petitioner then violated the conditions imposed after his Violation of Restraining Order conviction twice (October 2004 and June 2005).³⁴

Petitioner also violated the conditions of probation by failing to follow the recommendation of his chemical use assessment, failure to complete chemical

²⁴ *Id.*, subd. 3(i).

²⁵ *Id.*, subd. 6(a).

²⁶ *Id.*, subd. 6(c).

²⁷ Minn. Stat. §§ 14.63, 244.052, subd. 6(c).

²⁸ Ex. 1 Ex. 2, p. I; Ex. 3, pp. 1, 3-4; Ex. 4, pp. 284-288, 300, 337-341.

²⁹ Ex. 4 at 364.

³⁰ Ex. 4 at 341.

³¹ Ex. 4 at 335.

³² Ex. 4 at 334-335. (Violation Report, Nov. 14, 2003).

³³ Ex. 4. at 330-31.

³⁴ Ex. 4 at 325-327.

dependency treatment, failure to keep appointments, failure to remain law abiding, failure to attend sexual offense specific treatment, failure to make fine payments, and failure to complete community services hours.³⁵ In July 2004, a marijuana pipe was found in Petitioner's vehicle, and he admitted to engaging in high-risk behaviors that included visiting the municipal swimming pool and community beach without approval and without treatment program permission.³⁶ He later admitted chemical use to his agent in November 2004.³⁷

A subsequent probation violation report dated May 17, 2005, indicated Petitioner had started and been terminated from outpatient sex offender treatment on four occasions while on probation.³⁸ Petitioner was charged with failing to register as a predatory offender when it was discovered he moved without providing updated information in December 2012.³⁹

In July 2017, Petitioner was charged with Criminal Sexual Conduct in the Second Degree for touching an eleven-year-old female in the vaginal area in May of 2016, when Petitioner was 31 years old.⁴⁰ Petitioner was convicted after taking a Norgaard plea.⁴¹ He was sentenced for criminal sexual conduct in the second degree on April 18, 2018.⁴² He agreed to a 36-month stayed sentence with 120-days county jail and 20 years supervised probation.⁴³ Petitioner was also required to register as a predatory offender.⁴⁴

In July 2020, Petitioner violated his conditions of probation by failing to complete sex offender treatment, accessing or possessing pornography, using his daughter's smart phone to access Facebook messenger, and having unsupervised contact with unrelated female minors.⁴⁵ Petitioner was given a prison sentence as a result of his violations.⁴⁶ During his imprisonment, he participated in sex offender treatment from December 14, 2020, through April 25, 2022.⁴⁷ He did not complete treatment, but was released due to his mandatory release date of April 25, 2022.⁴⁸

After being released from incarceration on April 25, 2022, Petitioner violated his correctional supervision in June 2022 by having contact with minors.⁴⁹ Text message

³⁵ *Id.*

³⁶ Ex. 4 at 326.

³⁷ *Id.*

³⁸ Ex. 4 at 326.

³⁹ Ex. 4 at 319-320.

⁴⁰ Ex. 4 at 314-316.

⁴¹ Ex. 4 at 284-289, 292, 315-316.

⁴² Ex. 4 at 284-288.

⁴³ Ex. 4 at 284-288, 292.

⁴⁴ Ex. 4 at 287.

⁴⁵ Ex. 4 at 270, 273 – 274.

⁴⁶ Ex. 4 at 272.

⁴⁷ Ex. 4 at 186.

⁴⁸ Ex. 4 at 166-174.

⁴⁹ Ex. 4 at 20, 137-142, 145-147, 163.

exchanges between Petitioner and his girlfriend, S.P., indicated she thanked him for meeting her kids and letting them use his Xbox.⁵⁰ After self-surrendering to the Chippewa County Jail, Petitioner was required to complete a urinary analysis, but did not comply.⁵¹ His release was revoked and he was reincarcerated for 179 days.⁵²

Following his September 26, 2022, release from incarceration, Petitioner acquired employment and reinitiated his involvement in sexual offense specific treatment programming.⁵³ Petitioner re-entered sex offender treatment on December 6, 2022, but was terminated on April 14, 2023, after again having contact with minors.⁵⁴ He was restructured in May 2023 for numerous violations and he was terminated from sex offense specific treatment.⁵⁵

Petitioner returned to sex offender treatment May 16, 2023, but was again terminated August 16, 2023.⁵⁶ He returned to prison on August 31, 2023, for 180 days.⁵⁷ He was returned to confinement because he failed to enter required counseling, went to a liquor store and purchased a bottle of alcohol, threatened to break down the door of his adult girlfriend if she did not let him in, told another woman to give her daughter medication to get her to sleep so he could go to the woman's residence (he had previously been instructed to have no contact with either woman), and he failed to complete outpatient sex offense specific treatment.⁵⁸

B. Petitioner's First and Second ECRCs

Petitioner has had two ECRCs prior to this one. Petitioner's first ECRC was on December 2, 2021. He was assigned a Risk Level 2.⁵⁹ At that time, his MnSOST-4 score placed him presumptively in the category of Risk Level 2.⁶⁰ At that ECRC, Petitioner asked the ECRC to downwardly depart to Risk Level 1.⁶¹ He stated that he learned a lot about himself in prison, that he had a strong support system and that he wanted to be a good father and community member upon release.⁶² The ECRC saw no reason to downwardly depart and assigned Petitioner his then presumptive Risk Level of 2.⁶³

⁵⁰ Ex. 4 at 131-32, 139, 153a.

⁵¹ Ex. 4 at 133, 140-41.

⁵² Ex. 4 at 20, 125-129.

⁵³ Ex. 4 at pp. 71-72.

⁵⁴ Ex. 4 at 80-81.

⁵⁵ Ex. 4 at pp. 62-67, 70-73, 75-76, 77-81.

⁵⁶ Ex. 4 at 35-37.

⁵⁷ Ex. 4 at 2.

⁵⁸ Ex. 4 at p. 5-9, 20, 23-37, 40-43.

⁵⁹ Ex. 4 at 122.

⁶⁰ Ex. 4 at 199 to 206.

⁶¹ Ex. 4 at 200.

⁶² Ex. 4 at 200.

⁶³ *Id.*

Petitioner received his second ECRC on August 8, 2022, in anticipation of his release on September 26, 2022.⁶⁴ For that ECRC, Shelley Leutschaft, Ph.D., L.P., prepared a Risk Assessment Recommendation report.⁶⁵ Petitioner’s MnSOST-4 score placed him in a presumptive Risk Level 3 category, which is individuals who have committed sexual offenses that appear to be at a higher risk to sexually re-offend.⁶⁶ However, Dr. Leutschaft wrote in that recommendation report that “there appears to be reason to depart from the presumptive risk level at this time. Petitioner secured gainful employment upon his most recent release, and he was aligned to participate in sexual offense specific treatment via CORE Professional Services. He violated by having contact with his girlfriend’s minor aged sons and did not disclose having an internet capable Xbox device to his agent. However, the broadest level of community notification does not appear warranted at this time. Therefore, I recommend continuation of a Risk Level 2.”⁶⁷ The ECRC agreed and assigned Petitioner a Risk Level 2.⁶⁸

C. Petitioner's Current Risk Level Assignment

As part of the risk assessment process, prior to Petitioner’s expected release date of February 12, 2024, Shelley Leutschaft, Ph.D., L.P., prepared a Risk Assessment Recommendation report.⁶⁹

On September 25, 2023, Dr. Leutschaft,⁷⁰ scored the MnSOST-4.0 for Petitioner as follows:⁷¹

Items	Values
Total Violent Offense Sentences	2
Felony Offense Sentences	3
VOFP	1
Predatory Offenses	2
Stranger Victims	0
Male Victims	0

⁶⁴ Ex. 4 at 115 to 124.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Ex. 4 at 123.

⁶⁸ Ex. 4 at 199.

⁶⁹ Ex. 3.

⁷⁰ Ex. 3a.

⁷¹ *Id.*

Items	Values
Public	1
Multiple Age Groups	1
Suicidal Concern	1
Employment	0
Married	0
Post-Secondary Degree (0=No 1= Yes)	1
SO/CD Treatment	0
Release Violator (0 = No 1 = Yes)	1
Age at Release	39

Dr. Leutschaft correctly scored Petitioner’s MnSOST-4, resulting with a predictability of sexual recidivism of 6.27 percent, which placed him in the 96.10 percentile of sexual offenders.⁷² She noted that Petitioner’s score again placed him in a pool of individuals who have committed sexual offenses that appear to be at a higher risk to sexually re-offend.⁷³ Dr. Leutschaft did not identify any mitigating factors and found no reason to depart from Petitioner’s presumptive risk level.⁷⁴ Accordingly, Dr. Leutschaft recommended a Risk Level 3, Petitioner’s presumptive risk level.⁷⁵

On October 6, 2023, Petitioner’s third ECRC meeting was held.⁷⁶ Petitioner addressed the ECRC and his comments are described below. The ECRC voted unanimously to assign Petitioner a Risk Level 3. ⁷⁷ On October 9, 2023, Petitioner appealed his risk level assignment.⁷⁸

IV. Summary Disposition Standard of Review

Summary disposition is the administrative law equivalent of summary judgment.⁷⁹ A motion for summary disposition shall be granted when there is no genuine issue

⁷² *Id.*

⁷³ Ex. 3.

⁷⁴ *Id.*

⁷⁵ *Id.* at 4.

⁷⁶ Ex. 2; Ex. 9.

⁷⁷ Ex. 2.

⁷⁸ Ex. 1.

⁷⁹ *Pietsch v. Minn. Bd. of Chiropractic Exam’rs*, 683 N.W.2d 303, 306 (Minn. 2004); see also Minn. R. 1400.5500(K) (2023).

regarding any material fact, and the moving party is entitled to judgment as a matter of law.⁸⁰ 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.⁸¹

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.⁸² The administrative law judge does not weigh the evidence;⁸³ instead, the judge views the facts and evidence in a light most favorable to the non-moving party.⁸⁴

The moving party has the initial burden to show the absence of any genuine issue regarding any material fact.⁸⁵ A fact is material if its resolution will affect the outcome of the case.⁸⁶ 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.⁸⁷ A genuine issue is not a "sham or frivolous" one,⁸⁸ and it cannot rely on mere allegations or denials.⁸⁹ Instead, a genuine issue requires presentation of specific facts demonstrating a need for resolution in a hearing or trial.⁹⁰

Summary disposition cannot be used as a substitute for a hearing or trial on the facts of a case.⁹¹ Thus, summary disposition is only proper when no fact issues need to be resolved.⁹²

V. Arguments

In his Notice of Appeal, Petitioner stated that the ECRC's risk level determination is wrong because Dr Leutschaft relied on false accusations made at his last restructuring hearing.⁹³ Petitioner took issue with the allegations that led to his most recent incarceration.⁹⁴ He noted that he disagreed with the assignment of Risk Level 3 and stated that he has taken full responsibility for his past.⁹⁵ He stated that his actions

⁸⁰ *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).

⁸¹ Minn. R. 1400.6600 (2023).

⁸² *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).

⁸³ *Id.*

⁸⁴ *Ostendorf v. Kenyon*, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984).

⁸⁵ *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).

⁸⁶ *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).

⁸⁷ *Thiele*, 425 N.W.2d at 583.

⁸⁸ *Highland Chateau, Inc. v. Minn. Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984).

⁸⁹ *DLH*, 566 N.W.2d at 71.

⁹⁰ See Minn. R. Civ. P. 56.05.

⁹¹ *Sauter*, 70 N.W.2d at 353.

⁹² *Id.*

⁹³ Ex. 1.

⁹⁴ Ex. 1; Ex. 9.

⁹⁵ *Id.*

have to do with his being selfish and losing sight of his goals.⁹⁶ He does not consider himself an active sex offender and so acts as if the rules do not apply to him.⁹⁷ He states that he has been a good member of his community when he does not get into his “offending cycle.”⁹⁸ He said that he was committed to being accountable to his family, loved ones, and his parole agent.⁹⁹ His plan is to go back home, go back to work, and attend CORE treatment program.¹⁰⁰

The ECRC asserts that Petitioner raises no issues of material fact and summary disposition is appropriate.¹⁰¹

VI. Analysis

Petitioner does not dispute his presumptive risk level score. The Community Notification Act provides that the ECRC's role is to assess, on a case-by-case basis, the public risk posed by predatory offenders who are about to be released from confinement.¹⁰² The ECRC appropriately considered the statutory risk factors, Petitioner's criminal conduct, and the lack of mitigating factors and determined Risk Level 3 accurately reflected the risk Petitioner poses. Petitioner failed to raise an issue regarding a material fact in that, even taking all of the points Petitioner raised as true and, in the light, most favorable to Petitioner, the ECRC's determination would not be rendered erroneous.

Petitioner has not completed sex offender treatment and he has violated his probationary terms many times even after receiving a lower risk level assignment than his presumptive level three at his previous ECRC. The ECRC reasonably concluded that Petitioner's presumptive risk level should not be lowered a second time and no mitigating factors apply. While the ECRC's determination is, at least in part, subjective, its subjective judgement rests on discretion given to the ECRC by the legislature and its judgement grounded in the expertise of those assigned to the committee.

Accordingly, the Administrative Law Judge concludes that the ECRC's Motion should be granted, and Petitioner's risk level assignment affirmed. Petitioner's plans for treatment, community and family support upon release are commendable and he is encouraged to follow through with those intentions and through his conduct in the community, demonstrate that he poses a lower risk of harm. Once three years have elapsed since the imposition of his Risk Level 3 assignment, Petitioner may ask the ECRC to reevaluate him and seek assignment of a lower risk level.¹⁰³

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ ECRC Mem. at 1.

¹⁰² Minn. Stat. § 244.052, subd. 3(a).

¹⁰³ Minn. Stat. § 244.052, subd. 3(i).

VII. Conclusion

Petitioner has failed to raise a genuine issue of material fact related to the ECRC's risk level assignment and the ECRC is entitled to summary disposition as a matter of law. Therefore, the ECRC's Motion is **GRANTED**. Petitioner's appeal of his risk level determination is **DISMISSED**, and the assignment of Risk Level 3 is **AFFIRMED**.

B. J. C.