

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Risk Level
Determination of Jesse Lee
Randolph-Bradley.

**ORDER GRANTING
MOTION FOR SUMMARY
DISPOSITION**

This matter is pending before Administrative Law Judge Kimberly Middendorf pursuant to a Notice and Order for Hearing filed with the Office of Administrative Hearings on August 26, 2024.

James Austad, Assistant Attorney General, represents the End-of-Confinement Review Committee (ECRC) for the Department of Corrections (Department or DOC). Jesse Lee Randolph-Bradley (Petitioner) represents himself and appears without legal counsel.

On September 5, 2024, the ECRC filed a Motion for Summary Disposition (Motion). Petitioner was personally served with the Motion on September 17, 2024.¹ Petitioner did not respond to the Motion. The record closed on October 1, 2024, the due date for Petitioner's response.

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

ORDER

1. The ECRC's Motion is **GRANTED**.
2. Petitioner's appeal is **DISMISSED**.
3. Petitioner shall remain assigned to Risk Level 3.

Dated: December 6, 2024


KIMBERLY MIDDENDORF
Administrative Law Judge

¹ See Affidavit of Personal Service (Sept. 18, 2024).

NOTICE

Pursuant to Minn. Stat. § 244.052, subd. 6(c) (2024), 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 (2024).

MEMORANDUM

I. Introduction

Petitioner appeals the ECRC's Risk Level 3 assignment under the Minnesota Community Notification Act (Act).² The ECRC argues that it should be granted summary disposition because no issues of material fact exist and Petitioner cannot meet his burden to show that the ECRC erred in making his risk level assignment.³ Petitioner appealed his risk level assignment, contending that the risk level assigned was wrong because Petitioner disputes various details of the incidents upon which his risk level was determined.⁴ Based upon a review of the Motion and the record, the Judge concludes that the ECRC's Motion must be granted.

II. Minnesota Community Notification Act and Predatory Offender Registration

Minnesota law provides for both the registration of predatory offenders with law enforcement and the notification to the community about those offenders.⁵ There are two acts that work together to accomplish the purpose of community awareness and public safety: the Predatory Offender Registration Act and the Community Notification Act.⁶

The Minnesota Predatory Offender Registration Act requires that offenders who are charged with certain predatory offenses, or who are later convicted of other criminal offenses arising out of the same set of circumstances as the predatory offense, register with state law enforcement.⁷ Predatory offenses include, but are not limited to, kidnapping, false imprisonment, criminal sexual conduct, felony indecent exposure, child pornography, and other specific offenses.⁸ Registration seeks to ensure that law enforcement is able to locate predatory offenders living, working, or found within the state.⁹ When an offender is required to register under Minn. Stat § 243.166, the district court must inform the offender of the duty to register, as part of sentencing. The district court may not modify the duty to register.¹⁰

² Minn. Stat. § 244.052 (2024); see Exhibit (Ex.) 1.

³ Memorandum in Support of the ECRC's Motion for Summary Disposition of Risk Level Administrative Review (ECRC Mem.) (Sept. 5, 2024).

⁴ Ex. 1.

⁵ Minn. Stat. §§ 243.166-.167; 244.052.

⁶ *Id.*

⁷ Minn. Stat. § 243.166, subd. 1b(a).

⁸ Minn. Stat. § 243.166, subd. 1b.

⁹ See *generally* Minn. Stat. § 243.166.

¹⁰ See Minn. Stat. § 243.166, subd. 2.

The Minnesota Community Notification Act, in turn, provides for the community notification of predatory offenders who are registered in the state of Minnesota.¹¹ The purpose of community notification is to ensure that the public “in the area where a predatory offender resides, expects to reside, is employed, or is regularly found” is provided with information “that is relevant and necessary to protect the public and counteract the offender’s dangerousness . . .”¹² 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.”¹³

The scope of community notification required is related to the risk level assigned to a predatory offender. There are three risk level assignments under Minnesota law: Risk Level 1, Risk Level 2, and Risk Level 3.¹⁴ Each risk level is associated with a different degree of community notification.¹⁵ Risk Level 3 is the highest risk level and requires the broadest degree of notification.¹⁶ In contrast, Risk Level 1 is the lowest risk level and provides for the least extensive notification.¹⁷ The law requires the assignment of a risk level to “predatory offenders” before they are released from a Minnesota prison or treatment facility, or upon their release from a federal correctional facility in another state if the offender intends to reside in Minnesota.¹⁸

Risk level assignments are made by end-of-confinement review committees (ECRCs) composed of five individuals with varied offender experience, including the head of the correctional or treatment facility where the offender is confined, a law enforcement officer, a treatment professional trained in the assessment of sex offenders, a caseworker experienced in supervising offenders, and a victim’s services professional.¹⁹ ECRCs are established by the Department of Corrections (DOC) at each state correctional facility or state treatment facility where predatory offenders are confined.²⁰ Another ECRC is maintained for offenders from other states transferred to Minnesota for probation.²¹ The ECRCs assess, on a case-by-case basis, the public risk posed by predatory offenders who are about to be released from confinement and determine the risk level assignment for those offenders.²²

When assigning a risk level to an offender, the ECRC is required to apply the risk factors set forth in Minn. Stat. § 244.052, subd. 3(g) and utilize the “risk assessment scale”

¹¹ Minn. Stat. § 244.052.

¹² *Id.* at subd. 4(a).

¹³ Minn. Stat. §§ 244.052, subd. 4(a), 243.166, subd. 1b.

¹⁴ *See generally* Minn. Stat. § 244.052.

¹⁵ Minn. Stat. § 244.052, subd. 4.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *See* Minn. Stat. § 244.052, subd. 3(a)(1)-(3).

¹⁹ *Id.* at subd. 3(a).

²⁰ *Id.*

²¹ *Id.* at subd. 3a(a).

²² *Id.* at subd. 3(a).

developed by the Commissioner of Corrections under Minn. Stat. § 244.052, subd. 2.²³ The statutory risks factors include, but are not limited to the following: (1) the seriousness of the offense should the individual 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 the offender will reoffend if released to the community; and (6) whether the offender demonstrates a physical condition that minimizes the risk of re-offense.²⁴

To ensure that the statutory risk factors are consistently applied and based upon empirical data, the DOC has developed risk assessment scales to weigh the statutory risk factors consistent with actuarial information obtained from test groups of predatory offenders.²⁵ These scales help the ECRC determine which risk level to assign a predatory offender. The application of the risk assessment scale is conducted by a professional, generally a licensed psychologist, who has been specifically trained on the proper scoring method.²⁶

One of the risk assessment scales developed by the Commissioner pursuant to Minn. Stat. § 244.052, subd. 2, is the Minnesota Screening Tool Assessing Recidivism Risk (MnSTARR).²⁷ The MnSTARR is used to assess an individual's risk of engaging in further criminal behavior. This scale is used for predatory offenders who have not committed a sex-related offense. The MnSTARR is a statistical tool that estimates or "predicts" the likelihood of non-sexual violence recidivism for adult male predatory offenders following release.²⁸ The predicted probability of recidivism is then translated into a presumptive risk level and used as guidance for the ECRC in making its risk level assignment.²⁹

Using all available documents and information on an offender, the professional conducting the MnSTARR assigns a score for each of the scoring factors.³⁰ The scoring data is then inserted into the MnSTARR computerized actuarial program, which calculates an individual's predicted probability of recidivism within three years and reports a percentage.³¹ The ranges of predicted probability of recidivism are then categorized into three "presumptive" risk levels.³² A predicted probability of recidivism on the MnSTARR of 30 percent or lower results in a presumptive Risk Level 1; a predicted

²³ *Id.* at subds. 2, 3(d)(i).

²⁴ *Id.* at subd. 3(g).

²⁵ Ex. 5 (MnSTARR 2.0 Coding Guide).

²⁶ Ex. 8 (DOC Policy 205.220).

²⁷ MnSTARR 2.0 Coding Guide; DOC Policy 205.220. It is unclear from this record whether the MnSTARR has been properly updated and adopted, as DOC Policy references the "MnSTARR" while Exhibit 3 refers to the MnSTARR 2.0.

²⁸ See MnSTARR 2.0 Coding Guide. The MnSTARR predicts the probability of reconviction, not necessarily reoffending, which may not result in conviction. Accordingly, the MnSTARR predicts recidivism, not necessarily re-offense.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

probability of 30.01 to 59.99 percent results in a presumptive Risk Level 2; and a predicted probability of 60 percent or higher results in a presumptive Risk Level 3.³³

The ECRC, in its discretion, can deviate from the presumptive risk level identified by the offender's score on the MnSTARR.³⁴ The ECRC may apply mitigating factors for a downward departure, or special concerns, which are aggravating factors, for an upward departure.³⁵ DOC Policy 205.220 identifies ten special concerns and seven mitigating factors that an ECRC can consider along with an offender's MnSTARR score.³⁶ For example, an individual whose score on the MnSTARR places him in the presumptive Risk Level 2 category can be elevated to a Risk Level 3 if any special concerns exist to justify increasing his risk level or can be reduced to a Risk Level 1 if any mitigating factors exist to decrease his risk level.³⁷

Prior to an ECRC meeting, the treatment professional who scored the risk assessment tool prepares a report and recommendation for the ECRC.³⁸ The report generally contains: (1) a summary of the offense(s) for which the offender is currently incarcerated; (2) the offender's score on the risk assessment scale and the resulting presumptive risk level; (3) an evaluation of the six statutory risk factors applied to the offender's specific circumstances; (4) an analysis of any mitigating factors or special circumstances applying to the offender; and (5) a recommended risk level assignment and the rationale for it.³⁹

The professional's report and recommendation are instructive for the ECRC but not dispositive. Using the information provided in the report and recommendation, the ECRC can either: (1) follow the professional's recommendation and assign the recommended risk level; or (2) use its own discretion and assign a different risk level based upon its application of the statutory risk factors, its consideration of special concerns or mitigating factors, and the offender's score on the risk assessment scale.⁴⁰

Based on the report and recommendation, the offender's score on the risk assessment tool, the application of mitigating factors or special concerns, and the analysis of the statutory risk factors, the ECRC then assigns the predatory offender to a risk level.⁴¹ The ECRC must prepare a risk assessment report which specifies the assigned risk level and the reasons underlying the committee's decision.⁴² An offender

³³ Ex. 6.

³⁴ DOC Policy 205.220.

³⁵ DOC Policy 205.220; *see also In re the Risk Level Determination of R.B.P.*, 640 N.W.2d 351 at 356-57 (Minn. Ct. App. 2002) (holding that an ECRC did not err by applying special concerns to assign an offender to Risk Level 3 when the presumptive risk level was Risk Level 1).

³⁶ DOC Policy 205.220; *but see* Ex. 3 (identifying only three special concerns).

³⁷ DOC Policy 205.220.

³⁸ *See* Ex. 3 (Risk Assessment Recommendation).

³⁹ *See id.*

⁴⁰ *See generally* Minn. Stat. § 244.052; DOC Policy 205.220; MnSTARR 2.0 Coding Guide.

⁴¹ *See generally* Minn. Stat. § 244.052.

⁴² Minn. Stat. § 244.052, subd. 3(f).

who is assigned to Risk Level 2 or 3 may seek administrative review of the ECRC's risk assessment determination within 14 days of receiving notice of the ECRC's decision.⁴³

An offender must register as a predatory offender and maintain registration for a minimum of ten years.⁴⁴ Throughout that time, the appropriate level of notice must be given every time the offender changes residences.⁴⁵ The offender may request that the ECRC reassess the offender's assigned risk level after three years have elapsed since the initial risk assessment and may renew the request once every two years following subsequent denials.⁴⁶

III. Undisputed Facts

A. Petitioner's Background

Petitioner is a 35-year-old man.⁴⁷ Petitioner was convicted of first-degree aggravated robbery on April 8, 2009.⁴⁸ Petitioner is required to register as a predatory offender for this conviction, as the robbery charge arose from the same set of circumstances as a kidnapping charge.⁴⁹ Kidnapping is a predatory offense under Minn. Stat. § 243.166, subd. 1b.

According to the criminal complaint in that case, Petitioner followed a woman, C.C., into the foyer of her apartment building, pulled out a pistol, and demanded C.C.'s purse.⁵⁰ C.C. gave the Petitioner her purse, but Petitioner then demanded to be brought to C.C.'s apartment.⁵¹ While inside C.C.'s apartment, Petitioner told C.C. that he was going to tie her up in the bedroom.⁵² When C.C. ran for the door to her apartment, Petitioner followed and punched C.C. repeatedly in the face.⁵³ C.C. lost consciousness briefly, but awoke, got into the hallway, and continued to scream for help.⁵⁴ Petitioner fled out the back door of the building with C.C.'s property.⁵⁵

Petitioner's criminal history from 2001 to 2008 contains multiple violent offense juvenile delinquency petitions, including adjudications for first-degree aggravated robbery and terroristic threats in 2004; fifth-degree assault and first-degree aggravated robbery in

⁴³ Minn. Stat. § 244.052, subd. 6(a).

⁴⁴ Minn. Stat. § 243.166, subds. 1b, 3, 5a.

⁴⁵ *Id.*, subd. 3.

⁴⁶ Minn. Stat. § 244.052, subd. 3(i).

⁴⁷ Ex. 2 at 1.

⁴⁸ *Id.* at 16, 380.

⁴⁹ See Minn. Stat. § 243.166, subd. 1b.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

2006; and third-degree assault in 2007.⁵⁶ Petitioner was also found not competent to proceed on two first-degree criminal sexual conduct offenses in 2008.⁵⁷

Between 2016 and 2022, Petitioner was convicted of six felony offenses. In 2016, Petitioner was convicted of felony domestic assault against a female partner. In 2017, Petitioner was convicted of second-degree assault after stabbing his sister's boyfriend five times with a kitchen knife. In 2020, Petitioner was convicted of felony failure to register as a predatory offender. In 2021, Petitioner was convicted of violating a domestic abuse no contact order and domestic assault, both were felony offenses.⁵⁸ Petitioner was on probation when convicted of the 2021 offenses.⁵⁹ As a result, his probation was revoked, his sentence was executed, and he was incarcerated for 29 months in 2022.⁶⁰

Petitioner has a history of mental health issues. Petitioner was diagnosed during childhood with Attention Deficit Disorder (ADD), Attention-Deficit/Hyperactivity Disorder (ADHD), Emotional Behavioral Disorder (EBD), Posttraumatic Stress Disorder (PTSD), and depression.⁶¹ Petitioner had subsequently been diagnosed with severe Antisocial Personality Disorder (ASPD).⁶² A May 10, 2021 Competency to Proceed Forensic Evaluation offered the diagnoses of Major Depressive Disorder, moderate, recurrent; Unspecified Anxiety Disorder, and ASPD.⁶³ Petitioner has expressed continuing concerns about his inability to control his anger.⁶⁴ Petitioner has a history of suicidal ideation and at least three suicide attempts.⁶⁵

Petitioner attempted substance use programming while incarcerated beginning on February 28, 2018, but was administratively discharged on April 13, 2018, due to his inability to process information and aggressive outbursts.⁶⁶ While in the community, Petitioner attended aftercare programming at Park Avenue Center, but was terminated from the program in May 2024, due to punching a peer.⁶⁷

Petitioner has not expressed any verbal intent to reoffend.⁶⁸ Petitioner was released from prison on October 6, 2024.⁶⁹

⁵⁶ *Id.* at 362-363, 382, 383, 408.

⁵⁷ *Id.* at 483, 520. These offenses were found to have a preponderance of evidence that Petitioner committed the offenses.

⁵⁸ Ex. 3; Ex. 4 at 174-175.

⁵⁹ Ex. 4 at 175.

⁶⁰ Ex. 4 at 141-142.

⁶¹ Ex. 3 at 5; Ex. 4 at 482.

⁶² Ex. 4 at 373.

⁶³ *Id.* at 200-212.

⁶⁴ Ex. 3 at 5; Ex. 4 at 148.

⁶⁵ Ex. 4 at 148.

⁶⁶ Ex. 3 at 4-5; Ex. 4 at 296.

⁶⁷ Ex. 3 at 4-5; Ex. 4 at 54-59.

⁶⁸ Ex. 3 at 8.

⁶⁹ Ex. 2; Ex. 3.

B. First ECRC

Following his conviction of first-degree aggravated robbery in 2009, Petitioner was incarcerated for a term of approximately 80 months.⁷⁰ While incarcerated, Petitioner was disciplined 52 times and served segregation time for 30 of those infractions.⁷¹ The infractions included disobeying direct orders, abuse/harassment, threatening others, disorderly conduct, and physical altercations with other inmates.⁷²

Petitioner met with the ECRC for the first time on March 14, 2013.⁷³ Petitioner argued that he did not commit a sexual offense in 2006, and that, while his assaultive behaviors in the past did happen, he had since recognized his issues and was addressing them through attending classes.⁷⁴ The ECRC assigned Petitioner to a Risk Level 2.⁷⁵

C. Second ECRC

Petitioner was released from incarceration on July 24, 2013, to Damascus Way Half-Way Residential program in Golden Valley.⁷⁶ Petitioner successfully completed the program on October 11, 2013, and moved to Minneapolis, MN.⁷⁷ Although Petitioner appeared to be making a positive transition into the community, he absconded from supervision on December 3, 2013.⁷⁸ Petitioner was on fugitive status for 101 days and made no attempt to contact his supervisor.⁷⁹

Petitioner returned to Damascus Way on July 1, 2014, but was discharged the following month due to a lack of progress and several violations, including possession of a cell phone, being in unauthorized areas, being disrespectful to staff, and disobeying staff.⁸⁰ On October 25, 2016, Petitioner was convicted of felony domestic assault.⁸¹ On May 24, 2017, Petitioner was convicted of first-degree assault.⁸² Following the 2017 conviction, Petitioner was returned to prison on May 25, 2017.⁸³

⁷⁰ Ex. 4. at 379.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 358.

⁷⁴ *Id.*

⁷⁵ *Id.* at 358-360.

⁷⁶ *Id.* at 355-356.

⁷⁷ *Id.* at 356.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 349-350.

⁸¹ *Id.* at 325-326.

⁸² *Id.* at 321-322. 310-313.

⁸³ *Id.* at 309.

Petitioner underwent a risk assessment prior to his release on April 29, 2019.⁸⁴ The ECRC assigned Petitioner to a Risk Level 2 on December 6, 2018.⁸⁵

D. Third ECRC

Petitioner was released from custody to reside at 180 Degrees in Minneapolis, on April 29, 2019.⁸⁶ 180 Degrees terminated programming for Petitioner on June 12, 2019, because Petitioner was aggressive and making threatening remarks towards the staff.⁸⁷ Petitioner returned to 180 Degrees on September 30, 2019, but his programming was terminated for bringing an unauthorized smartphone, verbally threatening a staff member, and leaving the facility without authorization.⁸⁸ Petitioner was found in violation of his probation on November 21, 2019.⁸⁹

In 2021, Petitioner was convicted of misdemeanor disorderly conduct,⁹⁰ failure to comply with predatory offender registration requirements, violation of an order for protection, and violation of a no contact order.⁹¹ On December 15, 2022, Petitioner was convicted for felony domestic assault.⁹² Following this conviction, Petitioner again was returned to prison.⁹³

Petitioner met with the ECRC on August 10, 2023.⁹⁴ The MnSTARR 2.0 assessment completed on June 13, 2023, placed Petitioner in presumptive Risk Level 2 range.⁹⁵ At the ECRC meeting, Petitioner argued that it had been a long time since his last predatory offense and that he had no intent to reoffend.⁹⁶ The ECRC assigned him to a Risk Level 2 on August 18, 2023.⁹⁷ The ECRC cautioned the Petitioner that any return to incarceration may result in a new ECRC and an elevated risk level assignment.⁹⁸

Following his release from prison on December 12, 2023, the Petitioner failed to maintain contact with his supervising agent.⁹⁹ On May 9, 2024, Petitioner's urine test came back positive for alcohol and marijuana use.¹⁰⁰ That same day, the aftercare program discharged Petitioner after he physically assaulted a resident.¹⁰¹ Petitioner

⁸⁴ *Id.* 284-285

⁸⁵ *Id.* at 282-283.

⁸⁶ *Id.* at 279.

⁸⁷ *Id.* at 280.

⁸⁸ *Id.* at 264-265.

⁸⁹ *Id.* at 250-252.

⁹⁰ *Id.* at 143.

⁹¹ *Id.* at 188, 192, 196.

⁹² *Id.* at 141, 161-162.

⁹³ *Id.* at 141.

⁹⁴ *Id.* at 62.

⁹⁵ *Id.* at 66.

⁹⁶ *Id.* at 63.

⁹⁷ *Id.* at 64.

⁹⁸ *Id.*

⁹⁹ *Id.* at 60.

¹⁰⁰ *Id.* at 56.

¹⁰¹ *Id.* at 55, 59.

absconded law enforcement beginning May 10, 2024, and turned himself into Hennepin County Jail on or about May 20, 2024.¹⁰²

On June 12, 2024, the police responded to a call from a stabbing victim.¹⁰³ The victim stated that a man, who the police suspected to be Petitioner, got inside the victim's vehicle through the passenger door.¹⁰⁴ The man grabbed a gray plastic pen and began stabbing the victim in the face and chest.¹⁰⁵ After the victim called the police, the man left the scene in a gray-colored Lexus SUV.¹⁰⁶ The police later identified Petitioner as a suspect to this assault.¹⁰⁷

That same day, Petitioner reported to his supervising agent that he "hurt someone real bad" and "may have killed" them.¹⁰⁸ At 7:15 p.m., the agent received a text message from Petitioner stating that he cut off his GPS bracelet and intended to kill himself.¹⁰⁹ The Petitioner then went on the run and was driving without a valid driver's license.¹¹⁰ Petitioner was arrested on June 13, 2024, and incarcerated for violating the terms of his release.¹¹¹

E. MnSTARR and Current Recommendation to ECRC

In anticipation of Petitioner's release from prison on October 6, 2024, Andrew Hull, Ph.D., L.P. conducted a risk assessment on Petitioner.¹¹² As part of the risk assessment, Dr. Hull used the MnSTARR 2.0 to generate Petitioner's presumptive risk level.¹¹³ In his July 10, 2024 memorandum to the ECRC, Dr. Hull reported Petitioner's non-sexual violence predicted probability of recidivism to be 63.29 percent, placing Petitioner in the presumptive Risk Level 3 category.¹¹⁴ Dr. Hull considered the statutory factors, including Petitioner's criminal history, supervision history, personal characteristics, community supports, employment history, lack of verbal intent to reoffend, and physical condition.¹¹⁵

Dr. Hull recommended applying three special concerns to Petitioner: Special Concerns #1, #5, and #6.¹¹⁶ First, Dr. Hull recommended applying Special Concern #1, the degree of likely force if Petitioner were to reoffend.¹¹⁷ Support

¹⁰² *Id.* at 55.

¹⁰³ *Id.* at 41.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 41-42.

¹⁰⁸ *Id.* at 25-29.

¹⁰⁹ *Id.* at 28.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 22-29.

¹¹² Exs. 3, 8.

¹¹³ Ex. 3.

¹¹⁴ Exs. 3, 6.

¹¹⁵ Ex. 3.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 9.

for application of this concern includes Petitioner's history of physical violence and limited coping skills in managing his emotions.¹¹⁸

Special Concern #5 is based on the length of time since the registrant's last prior offense while the registrant was at risk to commit offenses.¹¹⁹ Dr. Hull's review of the available records for Petitioner indicated Petitioner failed to demonstrate a sufficient period in the community where violent behaviors were not present and/or reported by treatment staff or his supervisory agent.¹²⁰

Dr. Hull also concluded that Special Concern #6 - history of supervision failures - was applicable.¹²¹ Dr. Hull noted that since Petitioner's initial incarceration in 2009, he was noncompliant with his community supervision and treatment directives, made threatening comments to treatment staff, and was physically assaultive towards others, resulting in his return to prison five times and convictions for three new offenses.¹²²

Dr. Hull did not find any mitigating factors applicable to Petitioner.¹²³

A memorandum dated August 7, 2024, was provided to the ECRC detailing Dr. Hull's assessment and recommendation, in advance of the meeting.¹²⁴

F. ECRC Meeting and Petitioner's Appeal

The ECRC convened on August 7, 2024, to address Petitioner's risk level assignment.¹²⁵ Petitioner attended the ECRC meeting.¹²⁶ Petitioner confirmed he received the risk level assessment recommendation.¹²⁷ Dr. Hull read the recommendation into the record.¹²⁸

Petitioner was then asked for his statement.¹²⁹ Petitioner stated that he has tried to be a better person by maintaining employment and attending chemical dependency treatment before his last incarceration.¹³⁰ While Petitioner acknowledged having mental health difficulties, Petitioner claimed that he was calmer and more respectful now.¹³¹ When asked about how he could be less violent, Petitioner responded that he could walk away from conflict more often. However, he admitted that the mother of his child placed

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 8-9.

¹²⁰ *Id.* at 9.

¹²¹ *Id.* at 10.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Exs. 2, 3.

¹²⁵ Exs. 2, 9.

¹²⁶ *Id.*

¹²⁷ Ex. 9.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

an order for protection against him.¹³² When asked about his plans for release, Petitioner said he was currently attempting to obtain chemical dependency treatment to address both addiction and mental health issues.¹³³ Petitioner hoped to work to control his impulsivity and take personal criticism without being irrational.¹³⁴ Petitioner admitted he absconded during his most recent period of community supervision but explained that his mother was dying.¹³⁵ Petitioner denied stabbing anyone with a pen and claimed that the incident involved someone else.¹³⁶

The ECRC deliberated and unanimously agreed to assign Petitioner to a Risk Level 3.¹³⁷ On August 12, 2024, Petitioner timely appealed the ECRC's risk level determination.¹³⁸ In response to the Notice of Appeal, the ECRC filed a Notice and Order for Hearing with the Office of Administrative Hearings, initiating this contested case proceeding on August 26, 2024.¹³⁹

IV. Summary Disposition Standard of Review

Summary disposition is the administrative law equivalent of summary judgment.¹⁴⁰ 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.¹⁴¹ 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.¹⁴²

The function of an 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.¹⁴³ 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.¹⁴⁴

The moving party has the initial burden to show the absence of any genuine issue regarding any material fact.¹⁴⁵ A fact is material if its resolution will affect the outcome of

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Ex. 2; Ex. 8.

¹³⁸ Ex. 1.

¹³⁹ Notice of Appearance (Aug. 16, 2024).

¹⁴⁰ *Pietsch v. Minn. Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004); see also Minn. R. 1400.5500(K) (2023).

¹⁴¹ *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).

¹⁴² Minn. R. 1400.6600 (2023).

¹⁴³ *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).

¹⁴⁴ *Ostendorf v. Kenyon*, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984).

¹⁴⁵ *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).

the case.¹⁴⁶ 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 material fact.¹⁴⁷ A genuine issue is not a “sham or frivolous” one, and it cannot rely on mere allegations or denials.¹⁴⁸ Instead, a genuine issue requires presentation of specific facts demonstrating a need for resolution in a hearing or trial.¹⁴⁹

Summary disposition cannot be used as a substitute for a hearing or trial on the facts of a case.¹⁵⁰ Thus, summary disposition is only proper when no material factual issues need to be resolved.¹⁵¹

V. Analysis

The ECRC argues that Petitioner does not raise any issues of material fact, and it is therefore entitled to judgment as a matter of law.¹⁵² Petitioner did not file a response, so his arguments are drawn from his Notice of Appeal and from his statements at the ECRC meeting.¹⁵³

Petitioner argues that he has not done anything in the time since his third ECRC on August 18, 2023, to increase his risk level from a Risk Level 2 to a Risk Level 3.¹⁵⁴ Petitioner specifically disputes the accuracy of two recent incidents where it is alleged he engaged in violent conduct.¹⁵⁵ Petitioner claims he did not intentionally hit the resident in the May 9, 2024 incident, which caused him to be discharged from the aftercare program.¹⁵⁶ Petitioner also claims that he did not commit the stabbing incident on June 12, 2024.¹⁵⁷ Petitioner adds that he feels that his behavior is improving, that he withdrew from his domestic violence class so that he could work to support his children, and that he previously attended therapy sessions for his mental health.¹⁵⁸

Although Petitioner alleges factual disputes regarding hitting someone and his involvement in a stabbing, neither of these disputes would change the outcome of his presumptive risk level. Dr. Hull’s recommendation report includes a list of the values he entered to calculate the MnSTARR 2.0 score.¹⁵⁹ The MnSTARR 2.0 system uses convictions of crimes in its calculations, not charges or allegations.¹⁶⁰ Dr. Hull did not count the incidents Petitioner disputes as convictions. Thus, these incidents did not factor

¹⁴⁶ *O’Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).

¹⁴⁷ *Thiele*, 425 N.W.2d at 583.

¹⁴⁸ *Highland Chateau, Inc. v. Minn. Dep’t of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984).

¹⁴⁹ See Minn. R. Civ. P. 56.05.

¹⁵⁰ *Sauter*, 70 N.W.2d at 353.

¹⁵¹ *Id.*

¹⁵² ECRC Mem. at 6-8.

¹⁵³ See Ex. 1.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Ex. 1.

¹⁵⁷ *Id.*; Ex. 2.

¹⁵⁸ *Id.*

¹⁵⁹ Ex. 3a.

¹⁶⁰ Ex. 3a; Ex. 5.

into the MnSTARR 2.0 scoring process at all.¹⁶¹ The conviction values entered by Dr. Hull accurately reflect Petitioner's criminal record.¹⁶² Moreover, Petitioner's probation violation was established, and his denials now do not change the fact that he violated probation and served additional prison time as a result. Because Petitioner must register at the same level as his presumptive score unless the ECRC finds reasons to lower his score, Petitioner must be assigned Risk Level 3.

Petitioner does not argue that any mitigating circumstances would apply.¹⁶³ In reviewing the list of mitigating circumstances, none appear applicable to Petitioner.¹⁶⁴

Further, the Judge agrees there is no genuine dispute of fact that Special Concerns #1, #5, and #6 are applicable to Petitioner.¹⁶⁵ Therefore, even if there were an issue with the MnSTARR 2.0 score that lowered his presumptive risk level, these Special Concerns would elevate Petitioner to a Risk Level 3 and, thus, there is no issue of material fact to resolve.¹⁶⁶

There is no genuine issue of material fact in dispute that Petitioner's registerable offense involved severe physical violence.¹⁶⁷ Based on his conviction record, Petitioner continued to inflict physical violence on victims in other incidents after his registerable offense.¹⁶⁸ Even accepting Petitioner's explanations for the two incidents he disputes, Petitioner previously admitted to his supervising agent, shortly before his most recent incarceration, that he severely harmed someone to the point that he believed the victim to be at the brink of death.¹⁶⁹ Petitioner admitted at the ECRC meeting to ongoing issues with managing his impulsivity and a desire to improve his coping skills.¹⁷⁰ Petitioner has not demonstrated prolonged management of his violent outbursts. Accordingly, Special Concern #1 was correctly applied.

After his third risk assessment, Petitioner was released from prison on December 12, 2023, less than a year ago. He returned to custody a few months later.¹⁷¹ Petitioner has not demonstrated a notable period in the community where violent behaviors were not present. This violence was reported by treatment staff and his supervisory agent. Special Concern #5 was correctly applied due to the short length of time in the community since the Petitioner's last prior offense.

¹⁶¹ See Ex. 3.

¹⁶² Ex. 4.

¹⁶³ See Ex. 1.

¹⁶⁴ DOC Policy 205.220.

¹⁶⁵ Exs. 2 and 3.

¹⁶⁶ DOC Policy 205.220; see *In re the Risk Level Determination of R.B.P.*, 640 N.W.2d 351, 353-356 (Minn. Ct. App. 2002) (upholding ECRC's use of special concerns to increase R.B.P.'s risk level from presumptive Level 1 to a Level 3).

¹⁶⁷ See Ex. 4 at 379-386.

¹⁶⁸ Ex. 4 at 15-19.

¹⁶⁹ Ex. 4 at 25-29.

¹⁷⁰ Ex. 2.

¹⁷¹ Ex. 4 at 62.

Finally, the undisputed record details a long history of supervision failures.¹⁷² The events leading up to the current risk assignment include Petitioner cutting off his GPS bracelet, failing to listen to his supervising agent, illegally obtaining and driving a vehicle, and absconding from law enforcement for several days.¹⁷³ Special Concern #6 was correctly applied due to Petitioner's extensive documented history of supervision failures and the events leading to his most recent incarceration.

The Judge appreciates Petitioner wishes to improve his life and circumstances. Working to support his children is a worthy goal. Petitioner is encouraged to remain law abiding and comply with the terms of his release, as these things are helpful to obtaining a lower risk level assignment in the future and moving forward. The Judge reminds Petitioner that he may request reassessment of his risk level assignment after three years have elapsed since the ECRC's meeting on August 7, 2024.¹⁷⁴ If the request is denied, Petitioner may renew the request once every two years following subsequent denials.¹⁷⁵

VI. CONCLUSION

The ECRC has established that there is no genuine dispute of material fact, and that Petitioner was correctly assigned Risk Level 3 as a matter of law. Accordingly, the ECRC's Motion is **GRANTED**.

K. J. M.

¹⁷² See Ex. 4 at 58-61, 86-103, 111, 114, 158-160, 170-181, 316-320.

¹⁷³ Ex. 4 at 25-29.

¹⁷⁴ Minn. Stat. § 244.052, subd. 3(i).

¹⁷⁵ *Id.*