

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

In the Matter of the Risk Level  
Determination of Bobby E. Jefferson

**FINDINGS OF FACT,  
CONCLUSIONS AND ORDER**

This matter came on for hearing before Administrative Law Judge Manuel J. Cervantes at the Office of Administrative Hearings on May 24, 2012, pursuant to a Notice of Hearing, filed March 9, 2012.

Noah A. Cashman, Assistant Attorney General appeared on behalf of the Department of Corrections (DOC) End of Confinement Review Committee (ECRC).

Jennifer L. Lauermann, Assistant State Public Defender, appeared on behalf of Bobby E. Jefferson (Petitioner). The record closed on June 8, 2012, upon receipt of the parties' post-hearing submissions.

**STATEMENT OF THE ISSUE**

Did the ECRC err in assigning the Petitioner a Level III classification?

The Administrative Law Judge concludes the ECRC committed no error and properly assigned the Petitioner a Risk Level III.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Petitioner was born on November 7, 1979. He was convicted of disorderly conduct as a juvenile and was involved in several fights at school. Petitioner was also suspended from school for skipping classes. Petitioner did not complete high school, but earned his G.E.D while incarcerated. He began using marijuana and alcohol at age fifteen.<sup>1</sup>

2. Petitioner's substance abuse continued as an adult, including use of cocaine and ecstasy. He was referred to chemical dependency treatment on four

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<sup>1</sup> Ex. 1 at 47, 35, 38.

occasions (2001, 2004, 2007 and 2011) but did not finish, and in prison, Petitioner was terminated from the program.<sup>2</sup>

3. Petitioner acknowledged that he did not have employment prior to his arrest for the instant offenses, except some “side stuff” with his cousins. Petitioner also claimed that he had purchased a painting business, but the business did not have a license, any painting jobs lined up, or income.<sup>3</sup>

4. As an adolescent, Petitioner worked for a short time at the Science Museum of Minnesota. Later he worked as a telemarketer, gas station manager, and accounting auditor at a hotel. He relied on his parents and his girlfriends for economic support. Petitioner has recently joined the iron workers’ union where he was in training as an apprentice. He currently resides with his parents.<sup>4</sup>

5. In 1998, Petitioner pled guilty to first degree aggravated robbery, but still denies his guilt. He was sentenced to 48 months. Between sentencing in 1998 and the expiration of his sentence in 2006, Petitioner violated probation six times and served nearly 48 months in the workhouse.<sup>5</sup>

6. While on parole in May 2002, Petitioner was convicted of second degree assault and sentenced to 24 months of incarceration.<sup>6</sup>

7. Soon after his release from prison in April 2006, Petitioner was convicted by a jury of criminal sexual conduct in the third degree, kidnapping, and terroristic threats.<sup>7</sup>

8. The 16 year old Victim of the criminal sexual conduct reported the Petitioner was a stranger at the time of the offense. Petitioner claimed that the sexual contact was consensual and that he was falsely accused and railroaded. Petitioner does not accept responsibility for these offenses nor any of his other criminal convictions.<sup>8</sup>

9. A Pre-Sentence Investigation (PSI), including a psychosexual examination, was conducted in 2007. Petitioner was sentenced to 90 months and ten years of conditional release.<sup>9</sup>

10. Petitioner’s unlawful criminal sexual conduct requires him to register as a predatory offender.<sup>10</sup>

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<sup>2</sup> Ex. 1 at 35, 140.

<sup>3</sup> Ex. 1 at 50.

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

<sup>5</sup> Ex. 1 at 47.

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

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

<sup>8</sup> Testimony of Petitioner, Ex. 1 at 45-46.

<sup>9</sup> Ex. 1 at 56.

<sup>10</sup> Minn. Stat. § 243.166, subd. 1b (a)(i), (iii).

11. The DOC convenes ECRCs at state correctional facilities and state treatment facilities where predatory offenders are confined.<sup>11</sup> On August 24, 2011, Petitioner was assigned a Risk Level III based on a +9 score on the Minnesota Sex Offender Screening Tool-Revised (MnSOST-R).<sup>12</sup>

12. The MnSOST-R is an evaluation tool used to assess the likely risk of re-offense. It is utilized on a sex offender who is approaching his prison release date. It is based upon information from the offender's records, with points assigned for certain factors. When the points are tallied, a presumptive risk level is assigned. It is not a predictor of whether a particular individual will reoffend, but instead, places the offender in a group with characteristics that have certain risks of reoffending.<sup>13</sup>

13. In reviewing Petitioner's MnSOST-R score, it is noted that the Score Recording Sheet is divided into two components, designated "Historical/Static Variables" and "Institutional/Dynamic Variables". The score under the Historical/Static category is static, or cannot be changed, as it is based on an offender's historic offending experience. The total score range for this category is from -10 to +22. Petitioner received a +8 in this category.

14. The score under the Institutional/Dynamic category is dynamic or, can be changed, depending on the Petitioner's conduct and age. The total score range for this category is -4 to +9. Petitioner received a +1 in this category. When both scores were combined, Petitioner was assigned a +9. A score of 8 and above is considered to be at a high level of risk for re-offense.<sup>14</sup>

15. The assigned risk level establishes the level of notice given to the community where the predatory offender will reside, is employed, or is regularly found.<sup>15</sup>

16. On September 9, 2011, Petitioner was notified that he would be assessed by the ECRC on September 19, 2011.<sup>16</sup>

17. The ECRC must review the MnSOST-R score and determine on a case-by-case basis the public risk posed by sex offenders who are about to be released from confinement. In so doing, it uses both the presumptive risk level set by the MnSOST-R and the special risk factors spelled out in statute.<sup>17</sup>

18. The ECRC unanimously assigned a Risk Level III based on Petitioner's score, which indicated a presumptive Level III, but did not include any special concerns.

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<sup>11</sup> Minn. Stat. § 244.052, subd. 3 (a).

<sup>12</sup> Minn. Stat. §§ 243.166, 244.052, subd. 3, Ex. 1 at 139.

<sup>13</sup> Minn. Stat. § 244.052, subd. 2.

<sup>14</sup> Ex. 1 at 137.

<sup>15</sup> Minn. Stat. § 244.052, subd. 4 (a).

<sup>16</sup> Ex. 1 at 143.

<sup>17</sup> Minn. Stat. § 244.052, subd. 3 (d) and (g).

The ECRC also rejected Petitioner's arguments about the scoring of Elements 1, 3, 9, 10, 12, 13, and 14.<sup>18</sup>

19. At the hearing, Petitioner objected to the scoring of Elements 9 (whether the Victim was a stranger in any sex or sex related offense(s)), 10 (whether there is evidence of persistent and repetitive adolescent antisocial behavior), 11 (whether there is a pattern of substantial drug or alcohol abuse 12 months prior to arrest for the instant offense(s)), and 12 (employment history 12 months prior to the arrest for instant offense(s)).

Based on the Findings of Fact, the Administrative Law Judges make the following:

### **CONCLUSIONS**

1. The Administrative Law Judge has jurisdiction in this matter, pursuant to Minn. Stat. § 244.052, subd. 6.

2. Any of the Findings of Fact more properly termed Conclusions are hereby adopted as such.

3. The DOC gave proper notice of the hearing and has fulfilled all procedural requirements.

4. Under Minn. Stat. § 244.052, subd. 3(a), the ECRC "shall assess on a case-by-case basis the risk posed by predatory offenders who are about to be released from confinement."

5. Under Minn. Stat. § 244.052, subd. 6(b) an offender has the burden of proving by a preponderance of the evidence that the ECRC's risk assessment was erroneous.

6. For the reasons stated in the memorandum below, incorporated by reference herein, Petitioner has not shown, by a preponderance of the evidence, that the Risk Level III assigned by the ECRC was erroneous.

7. The MnSOST-R was scored properly, including Elements 9, 10, 11, and 12.

8. The ECRC did not err in assigning the Petitioner a Risk Level III.

Based on the Conclusions, the Administrative Law Judge makes the following:

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<sup>18</sup> Ex. 1 at 147.

## ORDER

IT IS ORDERED that the assigned Risk Level III to Bobby Jefferson by the End-of-Confinement-Review-Committee is AFFIRMED.

Dated: July 9, 2012

s/Manuel J. Cervantes

MANUEL J. CERVANTES  
Administrative Law Judge

Reported: Digitally Recorded

## NOTICE

Pursuant to Minn. Stat. § 244.052, subd. 6(c), 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 to 14.69.

## MEMORANDUM

The purpose of the Risk Level Assessment is to determine the risk a convicted sex offender poses to the community. Administrative review of the assigned risk level, under Minn. Stat. § 244.052, subd. 6(b) and (c), is a two-step process. First, the Petitioner must show by a preponderance of the evidence that the ECRC erred in assigning his risk level. In order to establish a fact in this proceeding by a preponderance of the evidence, the Petitioner must show that is more likely than not that the ECRC erred. Second, if the Petitioner can establish an error, the Administrative Law Judge must change the particular element and recalculate whether to change or uphold the ECRC's risk level assignment.

In this case, the Petitioner failed to meet his burden of proof. The Petitioner raised a number of challenges to the ECRC's risk level determination, specifically, the scoring on Elements 9, 10, 11, and 12.

### **ELEMENT 9: Whether the Victim was a Stranger in any Sex/Sex Related Offense**

First, the Petitioner argued the ECRC improperly scored Element 9, finding the Victim was a stranger. He argued that he knew the Victim "from the neighborhood." The evidence of record from the Victim, from Dr. Marston, and Petitioner himself, does not support his version of the facts that she was an acquaintance.

The Victim reported to the police that in the early hours of August 5, 2006, the date of the sexual assault that she met three unknown males, Petitioner included, standing in the street, and that she began talking with them.<sup>19</sup> Next, during Petitioner's psycho-sexual evaluation interview on April 2, 2007, he told Dr. Marston that he had only known the Victim a few hours at the time of the sexual assault.<sup>20</sup> Finally, from his interview with Dr. Marston, Dr. Marston concluded that the Victim was a stranger to Petitioner. Dr. Marston wrote, in relevant part, "The fact that she was a stranger and the assault occurred after two hours of acquaintance is significant ....."<sup>21</sup>

It was only during the ECRC proceedings that the Petitioner realized the significance and relationship of the acquaintance/stranger element to the M-SOST rating that Petitioner has argued that the Victim was not a stranger.

These facts support the ECRC's score on Element 9.

#### **ELEMENT 10: Whether There is Evidence of Persistent and Repetitive Adolescent Antisocial Behavior in the Petitioner's File**

This element is supported by the record. Petitioner was suspended for skipping school in the ninth grade. He was involved in a fight in middle school and one in high school; resulting in suspension. At age 17, Petitioner was convicted of Disorderly Conduct when he and his cousins beat up a neighbor because the neighbor had thrown a bicycle, scaring Petitioner's younger cousins.<sup>22</sup>

Petitioner became sexually active at age 13. Petitioner has an extended history of substance abuse dating back to age 15. His chemicals of choice at that age were marijuana and alcohol.<sup>23</sup>

Petitioner acknowledged his history of antisocial behavior.<sup>24</sup> This adolescent antisocial behavior, a precursor to his future violent behavior, is sufficient to support the ECRC's scoring of Element 10.

#### **ELEMENT 11: Pattern of Substantial Drug or Alcohol Abuse 12 Months Prior to Arrest for Instant Offense**

Petitioner's abuse of drugs and alcohol has been consistent from adolescence through the date of the sexual abuse offense in 2006, when he was twenty-six years of age. Petitioner indicated that he used marijuana nearly every day following his release

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<sup>19</sup> Ex. 1 at 21.

<sup>20</sup> Ex. 1 at 33.

<sup>21</sup> Ex. 1 at 42.

<sup>22</sup> Testimony of Petitioner, Ex. 1 at 39.

<sup>23</sup> Ex. 1 at 36.

<sup>24</sup> Ex. 1 at 42.

from prison right up to the morning in advance of the sexual offense.<sup>25</sup> On the morning of the assault, the Victim was offered Ecstasy and cocaine to entice her to come to the apartment where Petitioner was staying.<sup>26</sup> Petitioner then later demanded that the Victim owed him for the drugs and that she would need to perform sexual favors to repay him.<sup>27</sup>

The Petitioner had three failed attempts at chemical dependency treatments. The clear pattern of drug abuse leading up to the sexual assault offense supports the ECRC's scoring of Element 11.

### **ELEMENT 12: Employment History 12 Months Prior to the Arrest for Instant Offense**

Petitioner was arrested on August 11, 2006 for the instant offenses of criminal sexual conduct in the third degree, kidnapping, and terroristic threats so the relevant review period dates back to August 12, 2005. From his PSI report, it appears that Petitioner was incarcerated from June 24, 2005 through November 9, 2005, a period of nearly five months. His release was revoked approximately 7 weeks later, on December 30, 2005. There is no evidence that he was employed during this period of release. Petitioner was re-incarcerated from December 30, 2005 until his release on April 23, 2006.<sup>28</sup> The instant offenses occurred on August 6, 2006. Petitioner acknowledged that he did not have employment prior to his arrest for these offenses, except some "side stuff" with his cousins.<sup>29</sup> Based on this assertion, the ECRC rated this Element 0 as part-time, seasonal unstable employment.

Petitioner has not established, by a preponderance of the evidence, that 0 on Element 12 was erroneous. The record supports the ECRC's score on Item 12.

In conclusion, the Petitioner has failed in his burden to show any error in the ECRC's scoring of the MnSOST-R Elements. The ECRC's assigned risk level III is AFFIRMED.

**MJC**

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<sup>25</sup> Ex. 1 at 35.

<sup>26</sup> Ex. 1 at 21.

<sup>27</sup> Ex. 1 at 45-46.

<sup>28</sup> Ex. 1 at 47.

<sup>29</sup> Ex. 1 at 50.

