OAH 25-1101-40057

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Risk Level Determination of William George Sargent	**ORDER GRANTING MOTION FOR SUMMARY DISPOSITION**

This matter is pending before Administrative Law Judge Megan J. McKenzie upon a Motion for Summary Disposition (Motion) filed by the End-of-Confinement Review Committee (ECRC) on June 6, 2024. William George Sargent (Petitioner) did not respond to the Motion. The record closed on June 21, 2024, which was the deadline for Petitioner's response.

Angela Helseth Kiese, Assistant Attorney General, represents the ECRC. Petitioner William George Sargent (Petitioner) appeared 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 is **GRANTED**.

2. Petitioner's appeal is **DISMISSED**.

3. Petitioner's assignment of Risk Level three is **AFFIRMED.**

Dated: September 23, 2024

MEGAN J. MCKENZIE
Administrative Law Judge

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

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. Based upon a review of the Motion and the record, the Administrative Law Judge concurs and concludes that Petitioner's risk level assignment should be affirmed.

II. Legal Background

This case involves Petitioner's appeal of the risk level assigned to him by the ECRC pursuant to the Minnesota Community Notification Act (Act)[1]. Persons convicted of certain criminal offenses are considered "predatory offenders" and subject to the Act, which 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."[2] 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."[3]

The scope of community notification required by the Act is determined by assignment of one of the three different risk levels defined by statute.[4] Each risk level is associated with a different degree of community notification.[5] If an offender is assigned 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.[6] Risk Level 2 permits additional notice to groups such as schools, child care facilities and individuals likely to be victimized by the offender.[7] 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).[8]

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[1] Minn. Stat. § 244.052 (2024).
[2] Minn. Stat. §§ 243.166, subd. 1b, 244.052, subd. 4(a) (2024).
[3] Minn. Stat. §§ 243.166, subd. 1b, 244.052, subd. 4(a).
[4] Minn. Stat. § 244.052, subd. 4(b).
[5] *Id.*
[6] *Id.*, subd. 4(b)(1).
[7] *Id.*, subd. 4(b)(2).
[8] *Id.*, subd. 4(b)(3).

Every predatory offender confined in a Minnesota state correctional or treatment facility must be assessed by the ECRC at the facility prior to release.[9] The ECRC is responsible for assessing the public risk posed by each predatory offender upon release and determining the appropriate risk level assignment.[10]

When assessing risk and assigning a risk level, the ECRC is required by law to apply the risk factors set forth in Minn. Stat. § 244.052, subd. 3(g) (2024). The six risk factors to be considered 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 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 re-offense.[11] This list is not exclusive.[12]

In addition to considering the statutory risk factors, the ECRC must also apply a risk assessment scale when assigning a risk level to a predatory offender.[13] The score from the risk assessment tool translates into a presumptive risk level. The ECRC, in its discretion, can deviate from the presumptive risk level by applying mitigating factors for a downward departure or special concerns for an upward departure.[14]

Based upon the offender's score on the risk assessment tool, application of mitigating factors or special concerns, and analysis of the statutory risk factors, the ECRC must assign a final risk level to the predatory offender. The ECRC then prepares a report that "specifies the risk level to which the offender has been assigned and the reasons underlying the committee's risk assessment decision."[15]

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.[16] Administrative law judge at the Office of Administrative Hearings conducts the review under the contested case rules.[17] 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."[18] The administrative law judge's is final and subject to appellate judicial review.[19]

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[9] *Id.*, subd. 3 (2024).
[10] *Id.*
[11] *Id.*, subd. 3(g).
[12] *Id.*
[13] *Id.*, subd. 2 (2024).
[14] Minnesota Department of Corrections Policy No. 205.220 (August 5, 2022); *see also In the Matter of the Risk Level Determination of R.B.P.*, 640 N.W.2d 351, 354 (Minn. Ct. App. 2002).
[15] Minn. Stat. § 244.052, subd. 3(f).
[16] *Id.*, subd. 6(a).
[17] *Id.*, subd. 6(d). The contested case rules are found at Minn. R. 1400.5010-.8401 (2023).
[18] *Id.*, subd. 6(c).
[19] Minn. Stat. §§ 14.63, 244.052, subd. 6(c).

A risk level assigned to a predatory offender applies for a minimum of 10 years.[20] During that time, the appropriate level of notice must be given every time the predatory offender changes residence.[21] The predatory offender may 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.[22]

III. Petitioner's Background

Petitioner qualifies as a predatory offender based on a guilty plea to first-degree criminal sexual conduct in 1986 and because he was civilly committed as a sexually dangerous person (SDP) and person with a sexual psychopathic personality (SPP).[23]

Petitioner committed his predatory offense against an adult female acquaintance.[24] As the two were leaving a restaurant, Petitioner asked the victim to go somewhere to talk with him, and she agreed.[25] Petitioner took the victim to a basement where he attended AA meetings.[26] Petitioner brandished a knife and told her, "You're going to do whatever I say or I'm going to hurt you."[27] He removed her pants and forced her to have sexual intercourse, and then strangled her, leaving bruises on her neck.[28] After sexually assaulting her, he struck her on the side of the head and strangled her with both hands and with a necktie, as she pleaded for her life.[29] Petitioner later admitted that he had intended to kill her, but when she mentioned her children, he stopped the attack. Petitioner was charged with three counts of first-degree criminal sexual conduct, one count of third-degree criminal sexual conduct, one count of attempted first-degree murder, and one count of attempted second-degree murder for the offenses.[30] In June 1986, Petitioner pled guilty to one count of first-degree criminal sexual conduct, and the other charges were dismissed.[31]

Before committing the 1986 offense, Petitioner had a significant history of sexual offending and sexual violence as both a juvenile and an adult.[32] Petitioner has offended against both males and females, and his victims range in age from five years old to adults.[33] Petitioner also has a "history of sexual offending…using coercion, physical force, violence, and threats of death and bodily harm to gain compliance."[34]

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[20] Minn. Stat. § 243.166, subd. 6(a) (2024).
[21] *Id.*, subd 3 (2024).
[22] *Id*.
[23] Ex. 4 at 233-236 (Findings of Fact and Initial Commitment Order), 290-291 (Criminal Complaint).
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] Ex. 4 at 3 (Patient Background Check).
[30] Ex. 4 at 290-294 (Criminal Complaint).
[31] Ex. 4 at 281-282 (Warrant of Commitment), 284 (Sentence Guideline Worksheet), 285 (PSI).
[32] Ex. 4 at 228-235 (Findings of Fact and Initial Commitment Order), 285-294 (PSI).
[33] *Id.*
[34] Ex. 4 at 53 (Granting Provisional Discharge).

As an example, in 1976, Petitioner took a sixteen-year-old girl to a field after a party, raped her, and then beat her to death with his hands and a rock.[35] Petitioner pled guilty to second-degree murder and was sentenced to up to forty years in prison.[36] Petitioner was originally released in 1982. Petitioner returned to prison and was re-released twice for absconding before being released again in 1984.[37] Petitioner remained subject to supervision for the 1976 second-degree murder when he committed the 1986 predatory offense.[38]

In 2004, Petitioner was civilly committed as both an SDP and an SPP.[39] Petitioner received a provisional discharge from the commitment in February 2022.[40]

IV. Procedural History

On September 15, 2021, Petitioner was assigned a Risk Level 3 in anticipation of his provisional discharge.[41] On December 15, 2023, Petitioner was referred for a new ECRC.[42] Scott Fischer, a licensed psychologist, prepared a risk assessment recommendation for Petitioner on April 18, 2024.[43]

As part of the risk assessment, Dr. Fischer scored the Static-99R for Petitioner.[44] Petitioner received a score of four, placing Petitioner in the presumptive Risk Level 2 category.[45] Dr. Fischer also noted that two special two concerns applied to Petitioner. Dr. Fischer stated that Petitioner's prior history of sexual violence made Special Concern #2 (history of severe or gratuitous violence) clearly applicable. Dr. Fischer also determined that Petitioner carries a diagnosis of Sexual Sadism Disorder, making Special Concern #5 (deviant orientation and/or sexual preoccupation compulsory) likely applicable.[46] Based on Petitioner's score on the risk assessment tool, consideration of the statutory risk factors, and application of special concerns, Dr. Fischer recommended assigning a Risk Level 3 to Petitioner and gave the risk assessment recommendation to the ECRC.[47]

The ECRC convened on April 24, 2024, to address Petitioner's risk level assignment.[48] Petitioner attended the meeting and was heard prior to the committee's vote.[49] Petitioner argued that he committed his predatory offense almost 40 years ago

[35] Ex. 4 at 228-235 (Findings of Fact and Initial Commitment Order), 285-294 (PSI).
[36] *Id.*
[37] *Id*
[38] *Id.*
[39] Ex. 4 at 224-227 (Order for Indeterminate Commitment); 228-269 (Initial Commitment Order).
[40] Ex. 4 at 51-58 (Order Granting Provisional Discharge).
[41] Ex. 4 at 277-280 (Prior ECRC).
[42] Ex. 4 at 6 (ECRC Referral).
[43] Ex. 3; *see also* Ex. 7.
[44] Ex. 3.
[45] Ex. 3; *see also* Ex. 5.
[46] Ex. 3.
[47] Exs. 2-3.
[48] Ex. 2.
[49] Exs. 2, 10.

and he is now taking care of himself.[50] The ECRC asked Petitioner about his struggles in outpatient sex offender treatment.[51] Petitioner acknowledged his treatment was paused due to lack of progress, and he admitted he had been struggling and needed to make better decisions.[52] At the conclusion of the meeting, the ECRC voted to assign Risk Level 3 to Petitioner.

On April 30, 2024, Petitioner appealed the ECRC's risk level determination.[53] On May 31, 2024, the ECRC filed a Notice and Order for Review of Risk Level Assignment with the Office of Administrative Hearings.

V. Summary Disposition Legal Standard

Summary disposition is the administrative law equivalent of summary judgment.[54] 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.[55] 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.[56] 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.[57]

The moving party has the initial burden to show the absence of any genuine issue regarding any material fact.[58] A fact is material if its resolution will affect the outcome of the case.[59] 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.[60] A genuine issue is not a "sham or frivolous" one, and it cannot rely on mere allegations or denials.[61] Instead, a genuine issue requires presentation of specific facts demonstrating a need for resolution in a hearing or trial.[62]

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[50] *Id.*
[51] Ex. 10
[52] *Id.; see also* Ex. 4 at 23-31 (New Path Mental Health Services Progress Review).
[53] Ex. 1 (Notice of Appeal).
[54] *Pietsch v. Minnesota Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004); *see also* Minn.R.1400.5500(K) (2023).
[55] *See 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).
[56] *See e.g., DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).
[57] *See Ostendorf v. Kenyon*, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984).
[58] *See Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).
[59] *See O'Malley v. Ulland Bros*., 549 N.W.2d 889, 892 (Minn. 1996) (citing *Zappa v. Fahey*, 245 N.W.2d 258, 259-260 (Minn. 1976)).
[60] *See Thiele,* 425 N.W.2d at 583.
[61] *See Highland Chateau, Inc. v. Minnesota Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984) (citing *A & J Builders, Inc. v. Harms*, 179 N.W.2d 98, 103 (Minn. 1970)).
[62] *See* Minn. R. Civ. P. 56.05.

Summary disposition cannot be used as a substitute for a hearing or trial on the facts of a case.[63] Thus, summary disposition is only proper when no fact issues need to be resolved.[64]

VI. Analysis

The ECRC argues that Petitioner has not challenged the scoring of his Static-99R or application of the special concerns, and he has not alleged any material error in assigning him a level 3.[65] Petitioner did not respond to the Motion, so his arguments are drawn from his statements at the ECRC's meeting and his appeal. Petitioner asserts that the facts presented at the ECRC meeting were misleading and based on his past.[66] He states that he volunteers, shops for himself, has his driver's permit, and received a completion form for outpatient treatment at New Path.[67] The ECRC's Motion must be granted. The law requires that Petitioner be assigned Risk Level 3 because he was civilly committed as an SDP and SPP.[68] Petitioner may request reduction of his risk level assignment four years after the date of his provisional discharge, but only a little over two years have passed since Petitioner's discharge in February 2022.[69] Accordingly, assignment of Risk Level 3 is required until at least 2026.

Additionally, the ECRC did not err in assigning Risk Level 3 to Petitioner. Petitioner does not allege any error in the scoring of his Static-99R or the application of the two special concerns. Both special concerns cited by Dr. Fischer are fully supported by the record.[70] The ECRC had discretion to impose an upward departure based on these special concerns.[71]

VII. Conclusion

Petitioner failed to raise a genuine issue of material fact related to the ECRC's risk level assignment, and assignment of Risk Level 3 is required by law. The ECRC's Motion is **GRANTED**. Petitioner's appeal of his risk level determination is **DISMISSED** and assignment of Risk Level 3 is **AFFIRMED**.

M. J. M.

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[63] *See Sauter*, 70 N.W.2d at 353.
[64] *See id*.
[65] ECRC Memorandum in Support of Summary Disposition (ECRC Mem.)
[66] Ex. 1
[67] *Id.*
[68] Minn. Stat. § 253D.32, subd. 1.
[69] *Id.*; Ex. 4 at 51-62.
[70] E.g. Ex. 4 at 23-31 (Provisional Discharge Reports), 48-50 (Brief Mental Health Assessment), 212 (Sexual Violence Risk Assessment Report).
[71] *See ITMO the Risk Level Determination of R.B.P.*, 640 N.W.2d at 354.