STATE OF MINNESOTA
IN COURT OF APPEALS
A10-63
A10-66

George Chamberlain, petitioner,
Appellant (A10-63),

Eugene Christopher Banks, petitioner,
Appellant (A10-66),

vs.

State of Minnesota, et al.,
Respondents.

Filed August 3, 2010
Affirmed
Connolly, Judge

Carlton County District Court
File No. 09-CV-09-2536

George Chamberlain, Moose Lake, Minnesota (pro se appellant)

Eugene C. Banks, Moose Lake, Minnesota (pro se appellant)

Lori A. Swanson, Attorney General, Ricardo Figueroa, Assistant Attorney General, St. Paul, Minnesota (for respondents)

Considered and decided by Connolly, Presiding Judge; Stoneburner, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

In a consolidated appeal from denials of writs of habeas corpus, appellants challenge their civil commitments as sexually dangerous persons (SDP) and a sexual psychopathic personality (SPP), arguing that their conditions of confinement are punitive; that they have not received adequate treatment; and that Minn. Stat. § 253B.185 (2008) violates substantive due process, the constitutional prohibition against double jeopardy and ex post facto laws, and equal protection. We affirm.

FACTS

Eugene Christopher Banks

Appellant Eugene Christopher Banks was initially committed as an SDP by the district court in 1998. The district court found clear and convincing evidence that, as a result of his past course of harmful sexual conduct, personality disorder, and lack of sex-offender treatment, Banks satisfied the requirements for an SDP under Minn. Stat. § 253B.02 (2008 & Supp. 2009).

In 2004, Banks petitioned the Minnesota Commissioner of Human Services for full discharge from his civil commitment. The commissioner denied Banks's petition based on the recommendation of the special review board.[1] Following the denial, Banks

[1] The special review board is established by the commissioner and hears and considers all petitions for a reduction in custody or to appeal a revocation of provisional discharge. Minn. Stat. § 253B.18, subd. 4(c) (2008).

filed a petition for rehearing and reconsideration before the judicial appeal panel.[2] The panel affirmed the denial, concluding that:

> appellant failed to meet his burden of proving that a discharge or a transfer was appropriate because he continues to be in need of a highly structured secure setting for treatment as a sex offender, he currently resides at an appropriate facility that meets his needs, he remains at a high-risk to reoffend, he poses a significant danger to the public because he is an untreated sex offender, and it is unlikely that he could make a satisfactory adjustment to society.

Banks v. Goodno, No. A05-1861, 2006 WL 330210, at *2 (Minn. App. Feb. 14, 2006). On appeal from the judicial appeal panel, we concluded that the panel did not err in its findings and decision to dismiss Banks's petition for failure to present a prima facie case for discharge or transfer. *Id.*

In August 2009, Banks filed a petition for a writ of habeas corpus with the district court seeking discharge from his civil commitment on the grounds that Minn. Stat. § 253B.185 is unconstitutional. The state filed a return to the petition, arguing that Banks failed to make a prima facie case for habeas relief and that the petition should be denied. The district court denied Banks's petition after concluding that he failed to show "that the 'conditions of confinement' at the MSOP are punitive as applied to him" or "that he has not received adequate treatment." Further, the district court concluded that Banks's constitutional claims had no merit.

[2] The judicial appeal panel is composed of three judges and four alternate judges appointed from among the acting judges of the state. Minn. Stat. § 253B.19, subd. 1 (2008). A person committed as an SPP or SDP may appeal to the panel for a rehearing and reconsideration of a decision of the special review board. *Id*., subd. 2(b) (2008).

George Chamberlain

Appellant George Gerald Chamberlain was initially committed in 2002 after the state petitioned for Chamberlain's commitment as an SDP and SPP. The district court found by clear and convincing evidence that Chamberlain satisfied the requirements for civil commitment as defined by Minn. Stat. § 253B.02, subds. 18b, 18c.

In 2003, Chamberlain appealed his initial commitment on the grounds that: (1) the commitment was not supported by clear and convincing evidence; (2) the SDP statute is unconstitutional and in conflict with Minnesota caselaw; and (3) he was entitled to relief because the department of corrections did not refer this matter to the county attorney at least 12 months before his release from state prison. *In re Civil Commitment of Chamberlain*, No. C6-03-281, 2003 WL 21790534, at *1 (Minn. App. Aug. 5, 2003). After failing to be persuaded by Chamberlain's arguments, we affirmed his commitment. *Id*.

In July 2006, the district court found no change in the conditions that led the district court to conclude that Chamberlain was an SPP and SDP. Therefore, the district court committed Chamberlain for an indeterminate period of time.

In October 2009, Chamberlain filed a petition for a writ of habeas corpus with the district court seeking discharge from his commitment on the grounds that Minn. Stat. § 253B.185 is unconstitutional. The state filed a return to the petition, arguing that Chamberlain failed to make a prima facie case for habeas relief and that the petition should be denied. The district court denied Chamberlain's petition after concluding that he failed to show "that the 'conditions of confinement' at the MSOP are punitive as

applied to him" or "that he has not received adequate treatment." Further, the district court concluded that Chamberlain's constitutional claims had no merit. These appeals follow.

After appellants filed a joint brief and appendix, the state moved to strike the appendix to appellants' joint brief on the ground that it contains a document outside the record on appeal. Appellants did not file a response to the motion to strike. By order of this court dated June 7, 2010, the state's motion to strike the appendix to appellants' joint brief was granted.

D E C I S I O N

I. The district court did not err in concluding that appellants failed to meet their burden to demonstrate factual support for their assertions of unconstitutional conditions of confinement and inadequate treatment.

A writ of habeas corpus is a statutory remedy available "to obtain relief from imprisonment or restraint." Minn. Stat. § 589.01 (2008). "The scope of inquiry in habeas corpus proceedings is limited to constitutional issues, jurisdictional challenges, claims that confinement constitutes cruel and unusual punishment, and claims that confinement violates applicable statutes." *Loyd v. Fabian*, 682 N.W.2d 688, 690 (Minn. App. 2004), *review denied* (Minn. Oct. 19, 2004). Appellants assert that their confinement violates Minn. Stat. § 253B.185 and their constitutional rights. Appellants must set forth sufficient facts to establish a prima facie case for habeas relief. *State ex rel. Fife v. Tahash*, 261 Minn. 270, 271, 111 N.W.2d 619, 620 (1961). Generally, appellate courts "give great weight to the [district] court's findings . . . and will uphold the findings if they are reasonably supported by the evidence." *Northwest v. LaFleur*, 583 N.W.2d 589, 591

(Minn. App. 1998), *review denied* (Minn. Nov. 17, 1998). Questions of law, however, are reviewed de novo. *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006).

A. Conditions of Confinement

Appellants argue that Minn. Stat. § 253B.185 is unconstitutional because their conditions of confinement are punitive as applied to them. Appellants support their assertion by listing changes to the rules and policies of the Minnesota Sex Offender Program (MSOP). The changes to the MSOP's rules and policies highlight the coordination between the MSOP and the Minnesota Department of Corrections (DOC). For example, the MSOP and the DOC agreed to coordinate canteen and linen distribution. Because of the recent coordination of services between the MSOP and the DOC and adoption by MSOP of other policies similar to DOC policies, appellants argue that the conditions of commitment are now punitive because they are analogous to those applied to inmates.

The state correctly asserts that when making a constitutional challenge, appellants must show "direct and personal harm" resulting from the statute. *Nordvick v. Comm'r of Pub. Safety*, 610 N.W.2d 659, 663 (Minn. App. 2000). Appellants do not allege that Minn. Stat. § 253B.185 and the MSOP rules and policies cause them direct and personal harm. Appellants only list the changes to MSOP rules and policies as justification for classifying their conditions of confinement as punitive. Allegations must be more than argumentative assertions without factual support to warrant relief. *Beltowski v. State*, 289 Minn. 215, 217, 183 N.W.2d 563, 564 (1971). Because appellants offer nothing more

than baseless assertions, we find that they failed to present a prima facie case for habeas relief.

Further, after examining the MSOP's rule and policy changes, the same district court in both Banks's and Chamberlain's commitment hearings found that "the adoption of policies and rules by the Commissioner and the MSOP in order to provide a safe and secure environment does not equate to punishment." Indeed, a secure facility may impose restrictions and conditions upon patients as "long as those conditions and restrictions do not amount to punishment." *Bell v. Wolfish*, 441 U.S. 520, 537, 99 S. Ct. 1861, 1873 (1979). "Loss of freedom of choice and privacy are inherent incidents of confinement in such a facility." *Id.* If a restriction or condition is reasonably related to a legitimate governmental objective, it does not, without more, constitute "punishment." *Id.* at 539, 99 S. Ct. at 1874. The Minnesota Supreme Court has stated that restrictions and conditions are placed on patients "to control their behavior in order to protect the public and to treat individuals for the malady causing their inability to control their behavior." *In re Linehan*, 594 N.W.2d 867, 882 (Minn. 1999) (*Linehan IV*). Because the changes to MSOP's rules and policies are reasonably related to a legitimate governmental objective, the conditions of confinement at the MSOP facilities are not unconstitutional.

B. Adequate Treatment

Appellants also argue that the MSOP has failed to provide adequate treatment under Minn. Stat. § 253B.185. Minn. Stat. § 253B.03, subd. 7, requires that "[a] person receiving services under this chapter has the right to receive proper care and treatment,

best adapted, according to contemporary professional standards, to rendering further supervision unnecessary."

In support of their assertion that the MSOP has failed to provide adequate treatment, appellants argue that the MSOP has changed its focus from providing treatment to patients to warehousing sex offenders. Appellants cite the expansion of the MSOP-Moose Lake facility and the fact that no person civilly committed under Minn. Stat. § 253B.185 has completed treatment and been released from an MSOP facility. Because of the expansion and lack of past discharges, appellants argue that the MSOP does not intend to treat patients, and is thereby failing to provide adequate treatment. We disagree.

In order to assert that the MSOP has not provided adequate treatment, appellants must show that they have actually been deprived of treatment. *See In re Martenies*, 350 N.W.2d 470, 472 (Minn. App. 1984) ("[A] person may not assert his right to treatment until he is actually deprived of that treatment."), *review denied* (Minn. Sept. 12, 1984). Appellants have not produced evidence suggesting that the MSOP has denied them treatment. In fact, the record suggests the opposite. In Banks's previous appeal to this court, we found that he "refused to participate in treatment." *Banks v. Ludeman*, No. A08-2024, 2009 WL 1182314, at *2 (Minn. App. May 5, 2009), *review denied* (Minn. July 22, 2009). Similarly, Chamberlain "readily admits that he has refused to participate in the treatment program offered at the [MSOP]." The supreme court has ruled that the unlikelihood that the treatment will be successful does not render the civil commitment unconstitutional. *In re Blodgett*, 510 N.W.2d 910, 916 (Minn. 1994). It would be

incongruous for a patient to render treatment inadequate by refusing or proving uncooperative to treatment. *Id*. We therefore find appellants' claim that the MSOP has failed to provide adequate treatment meritless.

II. Public Law 280 is not implicated in the case at hand.

Appellants assert that Minn. Stat. § 253B.185 is criminal/prohibitive under a Public Law 280 analysis and therefore violates substantive due process. Federal statutes and caselaw govern Minnesota's jurisdiction over Native Americans. *State v. R.M.H.*, 617 N.W.2d 55, 58 (Minn. 2000). Through Public Law 280, "Congress granted Minnesota broad criminal and limited civil jurisdiction over specified Indian country within the state." *Morgan v. 2000 Volkswagen*, 754 N.W.2d 587, 590 (Minn. App. 2008) (citing Act of Aug. 15, 1953, Pub. L. No. 83-280, §§ 1162, 1360, 67 Stat. 588-90 (1953) (current version at 18 U.S.C. § 1162 (2006), 28 U.S.C. § 1360 (2006))). Because Public Law 280 only pertains to the question of whether Minnesota has jurisdiction over a case arising in Indian country or involving Native Americans, the law is not implicated in this case. Neither appellant was civilly committed because of actions taken on a reservation and neither appellant asserts that he is Native American.

III. Minn. Stat. § 253B.185 does not violate substantive due process, the constitutional prohibition against double jeopardy/ex post facto laws, or equal protection.

Appellants raise multiple arguments regarding the constitutionality of the civil commitment of SDPs and SPPs under Minn. Stat. § 253B.185. Appellants argue that the statute violates substantive due process, the prohibition against double jeopardy and ex post facto laws, and equal protection. Minnesota statutes are presumed constitutional,

and "our power to declare a statute unconstitutional should be exercised with extreme caution." *Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 299 (Minn. 2000). "Evaluating a statute's constitutionality is a question of law." *Hamilton v. Comm'r of Pub. Safety*, 600 N.W.2d 720, 722 (Minn. 1999). Accordingly, our review is de novo. *Id*.

A. Substantive Due Process

Appellants argue that civil commitment under Minn. Stat. § 253B.185 violates substantive due process by subjecting appellants to a "lifetime commitment to a prison-like environment . . . without ever having any hope of possible release." Appellants argue that there is no hope for possible release because no patient has ever been released by the MSOP. We disagree.

The Minnesota Supreme Court has previously addressed and rejected the argument that indeterminate commitment is analogous to a life sentence, and is thereby violative of substantive due process. *Linehan IV*, 594 N.W.2d at 873. The supreme court stated that "even when treatment is problematic, and it often is, the state's interest in the safety of others is no less legitimate and compelling. So long as civil commitment is programmed to provide treatment and periodic review, due process is provided." *Blodgett*, 510 N.W.2d at 916. Neither appellant contends that he has been deprived of treatment or periodic review.

Appellants also argue that Minn. Stat. § 253B.185 violates substantive due process because it is punitive in nature. Appellants cite *State v. Jones*, 729 N.W.2d 1 (Minn. 2007), to support their proposition. In *Jones*, the supreme court found Minn. Stat.

§ 243.166 (2002) (requiring predatory offenders to register with the state), to be criminal/prohibitory, and, therefore, punitive. 729 N.W.2d at 3. It appears that appellants are arguing that Minn. Stat. § 253B.185 is criminal/prohibitory by analogy because the statute also deals with sex offenders. We disagree.

The Minnesota Supreme Court has previously considered and rejected the argument that the civil commitment of SDPs and SPPs is punitive in nature. The supreme court stated that the civil commitment of SDPs and SPPs is remedial rather than punitive, with the primary goal being treatment, rather than detention. *Call v. Gomez*, 535 N.W.2d 312, 319-20 (Minn. 1995). Therefore, because neither appellant has been deprived of treatment or periodic review and Minn. Stat. § 253B.185 is not punitive, appellants' civil commitment does not violate substantive due process.

B. Double Jeopardy/Ex Post Facto

Appellants argue that civil commitment under Minn. Stat. § 253B.185 violates the constitutional prohibition against double jeopardy and ex post facto laws. Appellants again base their argument on the belief that Minn. Stat. § 253B.185 is criminal/prohibitory, and, therefore, punitive. Appellants do not cite any relevant caselaw that supports their assertion.

The Minnesota Supreme Court dealt squarely with the double jeopardy and ex post facto issues in *Linehan IV*. 594 N.W.2d at 871-72. In that case, the supreme court analyzed the double-jeopardy issue in light of the United States Supreme Court's decision in *Kansas v. Hendricks*, 521 U.S. 346, 369-71, 117 S. Ct. 2072, 2086 (1997), in which the Supreme Court determined that a Kansas commitment law similar to Minnesota's law did

not violate the constitutional prohibition against double jeopardy or ex post facto laws. The Minnesota Supreme Court concluded that the *Hendricks* decision supported its ruling that the "SDP Act does not contravene the Double Jeopardy and Ex Post Facto Clauses" because, like the Kansas law, the "acts are in the civil commitment chapters of their statutes; neither requires a prior criminal conviction; neither includes a scienter requirement for commitment; and under both acts a person committed is to be released once he or she is sufficiently rehabilitated and can control his or her sexual impulses." *Linehan IV*, 594 N.W.2d at 871. Further, the supreme court stated that the purpose of the statute is not deterrence or retribution, like criminal statutes; rather, the statute is used only when a person is suffering from a mental or personality disorder that prevents him or her from exercising control over his or her behavior. *Id*. at 871-72. This court reiterated this holding in *In re Civil Commitment of Martin*, 661 N.W.2d 632, 641 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003). We therefore find no merit in appellants' assertion that civil commitment violates the constitutional prohibition against double jeopardy and ex post facto laws.

C. Equal Protection

Appellants argue that civil commitment as an SDP and an SPP violates equal protection because Minn. Stat. § 253B.185 "[d]iscriminate[s] against Indians and [n]on-Indians alike" by "hav[ing] a law on the books that is criminal/prohibitive for Indians, but is civil/regulatory for all other races." Without citing any authority, appellants assert that Minn. Stat. § 253B.185 draws a distinction between Native Americans living on a

reservation and non-Native Americans. On its face, Minn. Stat. § 253B.185 does not draw such a distinction.

The state argues that a classification is not unconstitutional as long as it has some rational basis. In support of that contention, the state cites Supreme Court decisions suggesting that the U.S. Constitution "guarantees only equal law, not necessarily equal results." Therefore, according to the state, Minn. Stat. § 253B.185 is constitutional because it pursues the legitimate government interest of "identify[ing] that class of persons constituting a dangerous element in the community requiring control."

The Minnesota Supreme Court has examined these questions and set forth a different standard of review than the state contends. The supreme court previously stated that it assumes that because civil commitment for sexual predators threatens individual liberty, the United States Supreme Court would require heightened scrutiny in an examination of Minn. Stat. § 253B.185 and that the Minnesota Constitution requires no less. *Blodgett*, 510 N.W.2d at 917; *see also In re Linehan*, 557 N.W.2d 171, 186 (Minn. 1996) (*Linehan III*) (stating that heightened scrutiny is the appropriate level of scrutiny in an examination of the SDP statute), *vacated and remanded for reconsideration sub nom.*, *Linehan v. Minnesota*, 522 U.S. 1011, 118 S. Ct. 596 (1997). Under this heightened level of scrutiny, the Minnesota Supreme Court has concluded that the civil commitment of SDPs and SPPs under Minn. Stat. § 253B.185 does not violate the right to equal protection. *Blodgett*, 510 N.W.2d at 916-17 (addressing SPP commitment); *Linehan III*, 557 N.W.2d at 186-87 (addressing SDP commitment). The court concluded that, in cases dealing with sex offenders, "the compelling government interest is the protection of

members of the public from persons who have an uncontrollable impulse to sexually assault." *Blodgett*, 510 N.W.2d at 914. Because Minn. Stat. § 253B.185 passes the heightened-scrutiny standard of review, civil commitment for SDPs and SPPs does not violate equal protection.

Affirmed.