STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1823

In the Matter of the Civil Commitment of: Damon Brooks Bryant.

Filed April 5, 2011
Affirmed
Kalitowski, Judge
Concurring specially, Stauber, Judge
Concurring specially, Randall, Judge*

Dakota County District Court
File No. 19-PX-04-010234

Joe C. Dalager, Law Office of Joe C. Dalager, P.A., West St. Paul, Minnesota (for appellant Damon Brooks Bryant)

James C. Backstrom, Dakota County Attorney, Pauline M. Halpenny, Assistant County Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Stauber, Judge; and Randall, Judge.

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

KALITOWSKI, Judge

Appellant Damon Brooks Bryant argues that the record and the district court's findings and conclusions fail to support by clear and convincing evidence that he meets the criteria for indeterminate civil commitment as a sexually dangerous person (SDP). We affirm.

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

D E C I S I O N

The district court shall civilly commit a person under the Minnesota Commitment and Treatment Act if it finds by clear and convincing evidence the need for commitment. Minn. Stat. § 253B.18, subd. 1(a) (2010). Whether there is clear and convincing evidence in the record to support commitment is a question of law, which this court reviews de novo. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003). Findings of fact will not be set aside unless clearly erroneous. *In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995). The record is viewed in the light most favorable to the district court's decision. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). This court defers to the district court's role as fact-finder and its opportunity to assess witness credibility. *In re Commitment of Ramey*, 648 N.W.2d 260, 269 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002). "Where the findings of fact rest almost entirely on expert testimony, the [district] court's evaluation of credibility is of particular significance." *Thulin*, 660 N.W.2d at 144 (quotation omitted). The district court "shall make its determination upon the entire record." Minn. Stat. § 253B.08, subd. 7 (2010).

Appellant argues that the record does not contain clear and convincing evidence to support the district court's conclusion that he is an SDP. We disagree.

Minnesota law defines an SDP as someone who: "(1) has engaged in a course of harmful sexual conduct as defined in subdivision 7a; (2) has manifested a sexual, personality, or other mental disorder or dysfunction; and (3) as a result, is likely to engage in acts of harmful sexual conduct as defined in subdivision 7a." Minn. Stat. § 253B.02, subd. 18c(a) (2010). "Harmful sexual conduct" is defined as "sexual conduct

that creates a substantial likelihood of serious physical or emotional harm to another." *Id*., subd. 7a(a) (2010). The statutory phrase "likely to engage in acts of harmful sexual conduct" means that the person is "highly likely" to engage in harmful sexual conduct in the future. *In re Linehan*, 557 N.W.2d 171, 180 (Minn. 1996) (*Linehan III*), *vacated on other grounds*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand*, 594 N.W.2d 867 (Minn. 1999) (*Linehan IV*).

Course of Harmful Sexual Conduct

"Harmful sexual conduct" is "sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another." Minn. Stat. § 253B.02, subd. 7a(a). Conduct constituting criminal sexual conduct in the first through fourth degrees creates a rebuttable presumption of harmful sexual conduct. *Id.*, subd. 7a(b) (2010).

Here, there is a statutory presumption that appellant's two convictions of criminal sexual conduct in the second degree constitute harmful sexual conduct. The district court also determined that appellant engaged in other conduct that constituted harmful sexual conduct, involving an incident for which appellant was charged, but the charge was subsequently dismissed for lack of venue.

Appellant did not present evidence to rebut the presumption that he engaged in harmful sexual conduct, nor does he now on appeal specifically challenge the district court's conclusion that he engaged in harmful sexual conduct. We conclude that the record contains clear and convincing evidence to support the district court's finding that appellant engaged in a course of harmful sexual conduct.

Manifests a Sexual, Personality, or Other Mental Disorder or Dysfunction

Appellant does not now specifically contest the district court's finding that he manifests a sexual, personality, or other mental disorder, and the record supports such a finding. All three expert examiners agreed that appellant has a diagnosis of Axis I: Pedophilia, sexually attracted to males; Polysubstance Dependence; and Axis II: Antisocial Personality Disorder. Additionally, appellant has been previously diagnosed with Anxiety Disorder NOS, Antisocial Personality Disorder, Bipolar Disorder, Amphetamine Abuse, Post Traumatic Stress Disorder, and Sexual Abuse of a Child. Appellant also has a history of attempted suicide. All three expert examiners agreed that appellant's sexual and personality disorder or dysfunction does not allow him to adequately control his sexual impulses or behavior. Thus, on this record we conclude that clear and convincing evidence supports the district court's determination that appellant manifests a sexual, personality, or other mental disorder or dysfunction.

Highly Likely to Reoffend

Appellant contends the district court erred in concluding that he is "highly likely" to reoffend. We disagree.

In committing a person as an SDP, "it is not necessary to prove that the person has an inability to control the person's sexual impulses." Minn. Stat. § 253B.02, subd. 18c(b) (2010). Rather, the person must have a "present disorder or dysfunction [that] does not allow [him] to adequately control [his] sexual impulses." *Linehan IV*, 594 N.W.2d at 876. A district court should consider six factors in determining whether an offender is highly likely to reoffend: (1) the offender's relevant demographic traits; (2) the

offender's history of violent behavior; (3) the base-rate statistics for violent behavior among individuals with the offender's background; (4) sources of stress in the offender's environment; (5) the similarity of the present or future context to past contexts in which the offender has used violence; and (6) the offender's record with respect to sex-therapy programs. *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994) (*Linehan I*).

In its order for initial commitment, the district court specifically considered each of the six *Linehan I* factors and determined that appellant is highly likely to engage in harmful sexual conduct in the future.

Expert Opinions

Appellant argues that the record does not contain clear and convincing evidence to support the conclusion that he is highly likely to reoffend because the three experts who testified at his initial commitment hearing disagreed as to whether appellant should be considered highly likely to reoffend sexually in the future.

Dr. James Alsdurf, who did not interview appellant for purposes of the commitment hearing but completed a pre-petition screening evaluation of appellant, testified that he supported civil commitment of appellant as an SDP. Dr. Catherine Carlson interviewed appellant as directed by the district court, and testified in support of civil commitment of appellant as an SDP. Dr. Thomas Alberg, who interviewed appellant at appellant's request, stated that he had reservations in recommending commitment. But Dr. Alberg also testified that appellant (1) has engaged in a harmful course of sexual conduct; (2) has a sufficient diagnosis for commitment as an SDP;

(3) has not successfully completed sex-offender treatment; and (4) considering the *Linehan I* factors, has a high likelihood of committing another sex offense.

Thus, although Dr. Alberg did not ultimately recommend civil commitment, all three experts agreed, after considering the *Linehan I* factors and other relevant data, that appellant was highly likely to reoffend sexually in the future.

Time Between Offenses

Appellant also challenges the district court's conclusion that he is highly likely to reoffend, arguing that he has not reoffended since the offense underlying his 1997 conviction.

Although appellant has not been charged with a sexual offense since 1997, the record indicates that he was placed on supervised release in 1999 and was in the community for four years until he violated the conditions of release that he not have contact with minors and not use drugs. And though appellant was not charged with criminal sexual conduct, the incident underlying the supervised-release violation resulted in a felony drug conviction in 2004 and appellant has been in custody ever since. The district court specifically stated that it disagreed with Dr. Alberg's opinion that four years in the community without offending showed that appellant had reduced his risk of reoffending sexually, given the fact that appellant reoffended after being in the community for six years between his 1991 and 1997 offenses.

Treatment History

All three experts expressed concern that appellant has never successfully completed a treatment program for sex offenders. Appellant was evaluated in 1991 and

found not amenable to sex-offender treatment. In 1992, appellant began participating in treatment but was subsequently terminated for being resistant to treatment when attempts were made to address his recent sexual-assault conviction. In 1997, after appellant pleaded guilty to another sexual assault, appellant was evaluated by a psychologist. The testing suggested that appellant engaged in a great deal of self-pity, lacked empathy for others, rarely experienced guilt, and did not accept responsibility for his behavior. Appellant felt he was the victim rather than the perpetrator, and he was found to be at a very high risk to reoffend and not amenable to treatment. In 1999, appellant underwent two months of sex-offender treatment, but for the majority of this time appellant was described as argumentative, stubborn, and resistive. The treatment ended at the time of appellant's scheduled release date.

Following a drug conviction in 2004, appellant was directed to complete sex-offender treatment while in prison. Appellant repeatedly refused treatment, which resulted in an extension of his prison release date. From March 2007 until April 2009, appellant did participate in sex-offender treatment while in prison. Treatment staff noted that appellant had the intellect to be successful with treatment but demonstrated difficulty applying the skills he was learning. Staff also noted that appellant continued to resist addressing the underlying motives and arousal patterns that contributed to his sexual offending. While in treatment, appellant exhibited inappropriate behavior and received two informal disciplinary actions. As a result, appellant was terminated unsuccessfully from treatment and his prison release date was extended until the expiration of his sentence on October 13, 2009.

Dr. Carlson testified that appellant did not seem to make genuine efforts to address his sexual deviance while in treatment. Dr. Alsdurf stated that appellant clearly lacks insight into and commitment to sex-offender treatment. Dr. Alberg concluded that this creates a problematic risk factor for appellant because "people that are kicked out of treatment are more likely to reoffend than people who have not been treated . . . ."

Lack of Physical Violence

Appellant argues that his sexual assaults were "limited and involved no physical violence." Nevertheless, the record shows that results of various tests and evaluation mechanisms conducted or reviewed by the experts indicate that appellant is highly likely to reoffend.

In 2006, appellant was evaluated by the department of corrections on the MnSOST risk-prediction tool and given a score of 9+, placing him in the "high recidivism" category. Dr. Carlson gave appellant a score of 27 on the Hare Psychopathy Checklist-Revised 2nd Edition (PCL-R2), which indicates a higher-than-average psychopathy when compared to other adult offenders. Dr. Carlson testified that after consideration of the *Linehan I* factors, including risk-prediction tools, dynamic considerations, and other empirically derived factors, it is her opinion that appellant is highly likely to engage in acts of harmful sexual conduct in the future. Dr. Alberg opined that appellant's likelihood of reoffense is higher than anything that would be considered the base rate, which is, according to Dr. Alberg, the "number of occurrences of a given phenomenon which occurs in a population." Dr. Alberg gave appellant a score of 25 on the PCL-R2,

and stated that such a score is above that of the average prison population and that generally people with scores over 25 are more likely to reoffend than others.

Sources of Stress

Finally, appellant argues that despite stressors in the community, he has found employment and maintained relationships with women that involved contact with minor children without allegations of sexual misconduct surfacing. But despite appellant's assertions, all three experts testified that appellant would have a difficult time coping with stressors in the community.

Dr. Alsdurf testified that stress is a "very relevant factor" for appellant, that appellant does not have good coping strategies, and that appellant "is someone who would find it difficult to be involved in good independent decision making without a lot of external control for a substantial period of time." Dr. Alsdurf stated that it is likely appellant would be released to settings similar to those in which he had committed offenses in the past, and "there is not evidence that [appellant has] gained and integrated enough new tools to be able to convincingly not use drugs and alcohol, not make choices about staying away from circumstances in which he could be involved with potential victims." Both Dr. Alberg and Dr. Carlson opined that, based upon appellant's higher level of psychopathy, as well as his diagnoses, they would expect appellant to respond to stress in the future in a manner similar to how he has coped with it in the past. Even without allegations of sexual abuse surfacing, Dr. Carlson noted that appellant's history of dating women who have young boys "reflects poor judgment and a willingness to disregard high risk situations."

Although Dr. Alberg stated that the stressors appellant would face if released "would not be any more significant than the difficulties he experienced in the past and he was able to find housing and employment in past situations," Dr. Alberg also noted that appellant tends to respond to stressors with the use of chemicals, which would be problematic for him. Dr. Carlson testified that appellant has had difficulty coping with stress and has used mood-altering substances to cope with his emotional difficulties. The record indicates that although appellant has participated in chemical-dependency treatment on several occasions, he has subsequently relapsed, and has shown that he is unable to remain chemical-free while in the community. In 2004, after a felony drug conviction, appellant was again referred to chemical-dependency treatment but refused to cooperate. And, according to the experts, appellant's inability to remain chemical-free increases his likelihood of reoffending.

Conclusion

Dr. Alberg did not recommend commitment of appellant because he determined that certain evidence decreased appellant's likelihood of reoffending. But other aspects of Dr. Alberg's testimony, as well as the testimony of the other two experts, support the district court's decision to civilly commit appellant indeterminately as an SDP. In addition, the district court's factual findings concerning appellant's failure to complete sex-offender treatment, his noncompliance with the conditions of his supervised release, and his continued use of chemicals are supported by the record and present other clear and convincing evidence on which the district court could properly conclude that appellant is highly likely to reoffend.

Based on this record, we cannot say that the district court erred in its decision to indeterminately commit appellant as an SDP.

Affirmed.

STAUBER, Judge (concurring specially)

I also concur, and echo the sage wisdom and sentiments of Judge Randall, who has served conscientiously on this Court since its inception. While this court is bound by statutes and precedent, we are also ethically required to comment on systemic problems.

In a recent oral argument before this court, the state acknowledged that no post-sentence SDP/SPP committed person has ever been released, and that only a very few are being considered for possible provisional, but supervised, release. Hundreds are essentially warehoused at public expense *after* long prison sentences, under the guise of "treatment."

Have we created a class of criminals who are never to be released from incarceration (and both the St. Peter and MSOP - Moose Lake facilities could be characterized as incarceration)? Judge Randall is correct that if society intends to treat sex offenders differently because of mental health issues, they are entitled to early mental health treatment, just as the prison system treats physical ailments. Failure to provide early treatment not only deprives the inmate of a normal release, it also adds tremendous costs to our mental health system. Early treatment, rewarded by the opportunity of a normal release would create an incentive for successful inmate participation.

We would then be honest in fulfilling our duty to punish, timely treat, and rehabilitate our fellow citizens for successful release after long criminal sentences.

RANDALL, Judge (concurring specially)

> "We do not see things as they are,
> we see things as we are."
> ANNIE DILLARD,
> FOR THE TIME BEING (1999).

When you get frustrated, and you start to repeat yourself, to the point where your colleagues shake their heads in sympathy, want to pat you on the shoulder, and give you a piece of candy, you are getting older. I am getting older. This case happens to involve th civil commitment of an SDP. But SDP and SPP (sexual psychopathic personality) are, for practical purposes, the same issue. *See* Minn. Stat. § 253B.02, subds. 18b, 18c (2010). After a defendant has served a complete sentence for sex crimes and is entitled to release, the state attempts to "civilly commit" him, which means, if the state is successful (and it usually is), the defendant will move to a different and secure hospital-like setting where he will never get out, at least under the present rules of the game, unless he can somehow convince the authorities that he is "cured" and "won't do it again."

So far, in the 17-year history of SDP commitment since 1994, perhaps one person, or nobody, has ever been released. And that is a case where that one person was quickly brought back in. This one case has as its center point the only rabbit to ever escape the "Gulag Archipelago" and "live to tell about it."

I am concurring in the result, which is the continued civil commitment of appellant Bryant. Given the way the law is set up and the low bar to affirm a commitment proceeding, the majority opinion is correct.

The deeper issue, and the only real issue, is what do we do with a system in which we warehouse these people for the rest of their lives because, out of ignorance and fear, we are afraid to do anything different. The executive, legislative, and judicial branches all "kick the can down the road" and hope that it is someone else's problem some day when we are not up for election.

I wrote a concurrence in *In re Mattson*, No. C5-95-452, 1995 WL 365374 (Minn. App. June 20, 1995) (Randall, J., concurring), *review denied* (Minn. Aug. 30, 1995), back in 1995. There, I quoted Supreme Court Justice Wahl's prescient dissent.

> I concur with the majority. Under present Minnesota precedent, the result is correct. *See Minnesota ex rel. Pearson v. Probate Court of Ramsey County*, 309 U.S. 270, 274, 60 S. Ct. 523, 526 (1940), *aff'g* 205 Minn. 545, 287 N.W. 297 (1939); *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994). But I am troubled by the reality that the psychopathic personality statute, if we are to be honest, is being used only for preventive detention. As Justice Wahl warned,
>
> > the rigor and methodical efficiency with which the Psychopathic Personality Statute is presently being enforced is creating a system of wholesale preventive detention, a concept foreign to our jurisprudence.
>
> *In re Blodgett*, 510 N.W.2d 910, 918 (Minn. 1994) (Wahl, J., dissenting), *cert. denied*, 513 U.S. 849 (1994).

Id. at *4. Justice Wahl was correct. The psychopathic personality statute (and its successor, the SPP statute, and its fraternal twin, the SDP statute) created a system of preventive detention, "a concept foreign to our jurisprudence." In 1996, I wrote a dissent in *In re Linehan*, 544 N.W.2d 308, 319 (Minn. App. 1996) (Randall, J., dissenting), *aff'd*, 557 N.W.2d 171, 175 (Minn. 1996), *vacated and remanded*, 522 U.S. 1011 (1997), *aff'd*

as modified, 594 N.W.2d 867, 878 (Minn. 1999), *cert. denied*, 528 U.S. 1049 (1999). In *Linehan*, I correctly predicted that the case was just one more step in a continuing round to sidestep the Bill of Rights and keep people committed under the SPP Commitment Act and/or the SDP Act (codified as Minn. Stat. §§ 253B.01-253B.24 (2010)) in a secured facility, not for a crime, but simply because we do not want to let them out. *Linehan*, 544 N.W.2d at 325. Finally, in 1999, I wrote a special concurrence in *Joelson v. O'Keefe*, 594 N.W.2d 905, 913 (Minn. App. 1999) (Randall, J., concurring specially), *review denied* (Minn. July 28, 1999).

In those three opinions, all 12 to 16 years ago, I said, along with Justice Wahl, what those who follow the system know: There is no "system of justice" in our present schematic of civil commitments. There is a system of preventive detention, warehousing, because we are afraid to closely examine the problem.

I concur separately again today because, in the recent past, this issue has broken into the open and is now in the public domain.[1] The officials and administrative people in the Minnesota Department of Human Services (DHS), which administers SPP and SDP under the format laid down by the Minnesota Legislature, have gone public in an attempt to educate the public about the potential release of some of the detainees from the Moose Lake State Hospital and the St. Peter State Hospital. If they are released, it will be under strict terms of "civil probation," which involves halfway houses, monitoring,

[1] *See* Larry Oakes, *Located in Limbo*, STAR TRIBUNE, *available at* http://www.Startribune.com/projects/19529344.html (discussing the Minnesota Sex Offender Program).

medical exams, and the other means at the state's disposal to monitor and control released patients.

Those prudent officials "in the know" are doing this because they realize that with Minnesota's miserable track record, or 100% track record, pick your poison, of never releasing anybody, the entire scheme is due to dissolve under a load of constitutional bricks and the weight of the U.S. Constitution's Bill of Rights.

I have said it before but it is worth going through again. *We are not talking about criminal defendants*. The people committed had previously been convicted sex offenders and previously served every single hour of every single day that they owed the State of Minnesota (criminally). Then, as all criminals who have served all their time, they should be released to serve an amount of time equivalent to one-third of their sentence on rigorous supervised release (it generally starts with ISR, meaning intensive supervised release). *See* Minn. Stat. § 244.05 (2010). Every serious crime in this state, including second-degree murder, manslaughter, kidnapping, aggravated robbery, aggravated assault producing substantial bodily harm, first-degree controlled substance crime and first-degree burglary and arson,[2] and others equal to, or more serious than, many sex crimes, have a release date or "an out date."[3] For none of those serious crimes do we wait until they are about to be discharged from prison, and then "civilly commit them" for an

[2] *See* Minn. Sent. Guidelines IV (2010) (Sentencing Guideliens Grid, listing crimes at severity levels VIII through XI, with presumptive prison sentences even for first-time offenders).

[3] Murder in the first degree is handled separately. After 30 years' confinement, one becomes eligible for a parole hearing. Minn. Stat. § 244.05, subd. 4(b).

indefinite period, which means the rest of their lives. Not doing it for those crimes, but only sex crimes, is hypocritical – no other word for it.

The "law-and-order crowd" and the "get-tough-on-crime crowd" have argued that sex crimes are different. No, they are not. They are serious crimes (ironically, with some less serious than the above-enumerated non-sex felonies). It is argued that those who commit sex crimes are "sick" and have to be "treated and cured" before they can be released. Would that logic were the case. We do not civilly commit other "sick" people, such as kleptomaniacs, repetitive drunk-driver offenders, habitual check forgers, habitual illicit drug users and drug sellers, home burglars, thieves, second-story men and "cat burglars," meaning, in various forms, people who are addicted to other people's money. We give them a fair trial, a fair appeal if they want one, then a reasonable and determinate sentence consisting of two-thirds behind bars and one-third on supervised release, and then we release them on probation with terms as necessary to give them a chance for rehabilitation and recovery.

There need to be solutions other than the one we have now (called "lifetime incarceration"), which is not a solution, just issue avoidance. One possibility is to require the state, within one year or less of the defendant's entry into prison, to start a civil commitment proceeding, if they feel one is warranted. After the passage of that date, they are irrevocably barred. When these SPPs and SDPs enter prison, their crimes and past records are known to the state. The state does not have to "watch them" for 10 to 30 years in prison in an attempt to "discover" if they are serious sex offenders. If the state is successful in its petition for civil commitment, treatment would start within the confines

of the prison. No physician, psychologist, or other medical personnel in this area would state that it is better to forestall treatment for decades, and then start. Any expert would agree that if a record supported a finding of a serious sex offender, the effectiveness of the treatment would be enhanced by the earliest possible start.

Sex-offender treatment in a prison setting would cost more than the yearly upkeep of non-sex offenders just doing their time. Different housing, different facilities, inside the prison walls might have to be built. *But this cost pales compared to the cost the State of Minnesota puts on its taxpayers by not starting the treatment for years, decades, and then at the end of the confinement period starting the so-called treatment process in a secured state hospital for an indefinite period*. The figures for sex offender treatment at Moose Lake and St. Peter can vary, but an honest ballpark assessment would be $125,000 to $150,000 per year. When you have defendants confined in a state prison, you already have them locked up, fed three times a day, and hopefully given some job, so much of the infrastructure for sex offender treatment is already in place. Prison costs, again, are a variable, but for the state and all prisons, $30,000 to $45,000 per year per inmate would be an adequate ballpark number. Thus, one-third to one-sixth less than the locked hospital treatment we now employ.

I can also note that as he has it, the civilly committed person is not technically serving a criminal sentence and so there is no "good time" to lose if he sits on his hands and refuses treatment. Many of those now committed have figured out that since they will never be released anyway (unless we change the system), why do anything but go through the motions, or not go through the motions. How do you punish those who

"refuse treatment"? Tell them that you are going to lengthen their indeterminate sentence!

If DHS can come up with a plausible plan for eventual release, then the carrot is there for those committed to get with the program. If the treatment has to start in prison, as I previously set out, by the time those defendants have completed their lengthy sentences, they may be on track for intensive supervised release at a fraction of the cost to the public. An experienced probation officer with academic credentials and years in the field will likely have a salary with a range of $45,000 to $85,000 a year. If I am wrong, either high or low, I certainly expect someone to jump up and point that out. A probation officer with a caseload of just three to five people (a normal caseload could be 15 to 25) might think he has died and gone to heaven. That means one person, costing the state under $100,000 a year, could be saving the state hundreds of thousands of dollars. And give that released patient, under intensive supervision, a chance to again become a living, breathing person, possibly holding a job, paying taxes, and generating some support for his dependents.

There may be some defendants, but I expect only a handful, who at the end of a lengthy treatment process in prison are still deemed unacceptable for supervised release. In those cases, put the burden on the State of Minnesota to prove by at least clear and convincing evidence that on the remaining one-third of their sentence, they should not be released on intensive supervised release, but should be committed to Moose Lake or St. Peter to continue their treatment.

It would take some thoughtful legislation to implement this or other ideas, but no idea we can think of is as bad as the one we have now. The present push by DHS to come up with some acceptable program for release before death is proof of what I just said.

I said in *Mattson*, 16 years ago:

> Preventive detention bears an eerie resemblance to the old Stalinist Russia winter resort for political dissidents at a gulag archipelago.
>
> It bears a resemblance to our own Farewell to Manzanar. This is not to say that I am unaware that conditions in 1942 were different than conditions today. The Japanese Relocation Act was the considered decision of those in power during World War II. At least it was honest, not disguised as "remedial treatment." It was acknowledged to be pure preventive detention, preventive detention of a singled out class of people, not for what they had done, but for what they might do. We look back on it now and learn. If history teaches us anything, it is that the past does not mandate the present. But history teaches that the past dictates that we give the past thoughtful consideration when seeking guidance for the present.

Mattson, 1995 WL 365374, at *5.

I said in *Joelson*, 12 years ago:

> As a husband and a father, I could be persuaded that preventive detention of sexual predators, despite being a violation of the Bill of Rights, is good public policy. It is just that as a judge, I hate lying about it.

Joelson, 594 N.W.2d at 918.

I still believe that.