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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0692**

In the Matter of the Civil Commitment of:
Shawn Michael Jamison

**Filed October 1, 2012
Affirmed
Ross, Judge**

Wright County District Court
File No. 86-PR-10-5804

Deborah Moore Gilman, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, John D. Gross, Assistant Attorney General, St. Paul,
Minnesota; and

Thomas N. Kelly, Wright County Attorney, Buffalo, Minnesota (for respondent)

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

UNPUBLISHED OPINION

ROSS, Judge

Shawn Jamison pleaded guilty to criminal sexual conduct after he sexually assaulted a four-year-old girl and a ten-year-old girl. The district court civilly committed Jamison as a sexually dangerous person. Jamison appeals, arguing that the Minnesota Sex Offender Program (MSOP) is punitive in nature and has failed to accomplish its goal of providing effective rehabilitative treatment, falling short of the legislature's intent and

violating his constitutional rights. He also argues that Minnesota Statutes section 253B.185 (2010), which requires the patient to prove the existence of a viable and less-restrictive treatment alternative to avoid commitment, violates his substantive due process rights. Jamison waived his rehabilitative-treatment and as-applied constitutional arguments by not raising them before the district court. Caselaw has already established that commitment to the MSOP is neither preventative detention nor punitive in nature. We therefore affirm the decision of the district court.

FACTS

Shawn Jamison sexually assaulted two girls. He sexually touched a four-year-old girl in 2000, and he had sexual intercourse with a ten-year-old girl multiple times during 2001 and 2002. He pleaded guilty to fifth-degree criminal sexual conduct for abusing the four-year-old and second-degree criminal sexual conduct for abusing the ten-year-old.

In July 2006, Wright County petitioned the district court to commit Jamison as a sexually dangerous person and sexual psychopathic personality. But the county dismissed the petition after the court-appointed examiner, Dr. Peter Meyers, interviewed Jamison and was not persuaded that he met the criteria for commitment.

Wright County filed another petition seeking to commit Jamison in September 2010, however, after Dr. Meyers observed that Jamison had then acknowledged that he is sexually attracted to children. Dr. Meyers concluded that Jamison had lied during his 2006 interview and that he meets the criteria for civil commitment.

The court appointed Dr. Paul Reitman and, at Jamison's request, Dr. Mary Kenning, to serve as examiners. Dr. Reitman and Dr. Kenning separately interviewed

Jamison. Both concluded that Jamison has engaged in a course of harmful sexual conduct, that he has a sexual and mental disorder that renders him unable to adequately control his sexually harmful behavior, that he is highly likely to reoffend, and that he is dangerous to the community. They also concluded that the MSOP is the only suitable program for him. Dr. Reitman recommended commitment as a sexually dangerous person and sexual psychopathic personality, while Dr. Kenning recommended committing Jamison only as a sexually dangerous person.

The district court found that clear and convincing evidence proves that Jamison needs treatment and that the MSOP can meet his needs and protect the public's safety. It also found that Jamison failed to produce evidence of a less-restrictive treatment option. It ordered that Jamison be committed to the MSOP as a sexually dangerous person for an initial period of 60 days. After the 60 days, the MSOP submitted a treatment report recommending that Jamison remain civilly committed indeterminately.

The district court then conducted a review hearing. Dr. Kenning opined that Jamison continued to qualify for civil commitment. Jamison argued that the MSOP is punitive in nature and lacks actual treatment. The district court concluded that all the procedural requirements for review of Jamison's case had been satisfied and that the statutory requirements for commitment continue to be met. It ordered that he be indeterminately committed to the MSOP as a sexually dangerous person.

Jamison appeals.

DECISION

Jamison challenges his commitment by arguing that the MSOP has failed to accomplish its goal of providing effective treatment for rehabilitating sexually dangerous persons, citing a March 2011 Legislative Auditor's Report of the Minnesota Sex Offender Program. But Jamison did not raise this argument during trial, and the auditor's report was not admitted into evidence. His attorney conceded at oral argument that the failure to properly raise this issue before the district court results in its waiver on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). The issue is waived. The same is true of Jamison's second argument, which is that Minnesota Statutes section 253B.185, subdivision 1 (2010), is unconstitutional because less-restrictive alternatives to commitment are unattainable or nonexistent.

Jamison argues that section 253B.185 violates his constitutional right to due process because the MSOP conditions are punitive and the program constitutes preventative detention. We review the constitutionality of a statute de novo. *State v. Martin*, 773 N.W.2d 89, 97 (Minn. 2009). The United States and Minnesota Constitutions protect individuals from the deprivation of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. "[S]ubstantive due process protects individuals from 'certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them.'" *In re Linehan*, 594 N.W.2d 867, 872 (Minn. 1999) (quoting *Zinerman v. Burch*, 494 U.S. 113, 125, 110 S. Ct. 975, 983 (1990)). But the Minnesota Supreme Court has already resolved the legal question. It has held that civil commitment is remedial in nature, not punitive, because its goal is

treatment, not preventative detention. *Call v. Gomez*, 535 N.W.2d 312, 319–20 (Minn. 1995). Jamison’s argument therefore fails.

Jamison also appears to question the adequacy of his treatment at the MSOP. We have held that this is not an appropriate challenge in an appeal of a district court’s civil-commitment order; it is better suited for a habeas corpus petition, a civil rights claim, a petition for declaratory or injunctive relief, or a hearing before the special review board, as provided by Minnesota Statutes section 253B.22 (2010). *In re Civil Commitment of Travis*, 767 N.W.2d 52, 58–59 (Minn. App. 2009); *see also In re Wicks*, 364 N.W.2d 844, 847 (Minn. App. 1985) (holding that district court properly committed mentally disabled patient to state hospital and noting that “[g]enerally, the right to treatment issue is not reviewed on appeal from a commitment order”), *review denied* (Minn. May 31, 1985); *In re Civil Commitment of Navratil*, 799 N.W.2d 643, 651 (Minn. App. 2011) (holding that the “commitment process is not the proper avenue for asserting a right-to-treatment argument” because the “[t]reatment of committed individuals is the province of the commissioner of human services, not the district court”), *review denied* (Minn. Aug. 24, 2011).

Affirmed.