STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1630

In the Matter of the Civil Commitment of:
John Werner Deutsch, Jr. a/k/a John Warner Deutsch, Jr.

Filed February 25, 2013
Affirmed
Hooten, Judge

Ramsey County District Court
File No. 62-MH-PR-11-261

Mary M. Huot, St. Paul, Minnesota (for appellant)

John Choi, Ramsey County Attorney, Beth Sullivan, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Connolly, Judge; and Rodenberg, Judge.

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

HOOTEN, Judge

Upon completion of a prison term for numerous convictions of first-degree criminal sexual conduct against minor children, the district court found appellant to be both a sexually dangerous person and a sexual psychopathic personality and committed appellant to the Minnesota Sex Offender Program (MSOP) for an indeterminate period of time. On appeal, appellant argues that the record does not support the conclusion that he satisfies the statutory requirements for civil commitment, and that intensive supervised

release through the department of corrections constitutes a viable, less-restrictive alternative to civil commitment. He also argues that he has been denied due process of law since being held at the sex offender program after his release from prison. We affirm.

FACTS

On May 26, 2011, a petition was filed in Ramsey County District Court seeking the judicial commitment of appellant John Werner Deutsch, Jr. as a sexually dangerous person (SDP) pursuant to Minn. Stat. § 253B.02, subd. 18c (2012), and a sexual psychopathic personality (SPP) pursuant to Minn. Stat. § 253B.02, subd. 18b (2012). Appellant has been incarcerated since 1994 and had a release date from the department of corrections (DOC) of June 30, 2011, at which time he was to be placed on intensive supervised release (ISR) through June 2019 and serve probation through approximately 2025. At his commitment trial, appellant stipulated that he has been diagnosed with pedophilia and other mental illnesses, he has engaged in "a habitual course of misconduct in sexual matters" as set forth in Minn. Stat. § 253B.02, subd. 18b, and that he "has engaged in a course of harmful sexual conduct" as set forth in Minn. Stat. § 253B.02, subds. 7a, 18c (2012).

In November 1994, appellant pleaded guilty to one count of first-degree criminal sexual conduct. He later received a stayed 86-month sentence, was placed on probation for 30 years, and was required to complete sex offender treatment at Alpha House. However, while at Alpha House, appellant was convicted of five additional counts of first-degree criminal sexual conduct against five separate victims who came forward with

allegations stemming from incidents that occurred before his initial conviction. He admits to having committed harmful sexual conduct against 123 victims, both male and female, between the ages of two months and 18 years, which included acts of deviant sexual behavior, indecent exposure, and voyeurism. Indicative of his cognitive distortions of his conduct, he rationalized his behavior by claiming that the children either consented, liked what he was doing, or were not hurt or victimized by his actions because he did not threaten them.

Appellant began treatment at MSOP through the DOC in 2001 in a program created for treating high risk offenders in the same manner as the program provided by the department of human services (DHS). Appellant completed the program and was released back into the general prison population in December 2007. However, in July 2008, appellant admitted to performing oral sex on another inmate in violation of prison rules. He returned to the second phase of treatment and again completed the program in June 2009.

Appellant's argument focuses on purported inconsistencies and inadequacies of the testimony and evidence provided by professional examiners. Peter Meyers, Psy.D., served as the court-appointed examiner. Harry Hoberman, Ph.D., conducted an independent forensic examination of appellant for Ramsey County, and Paul Reitman, Ph.D., was appointed as the second examiner. Dr. Gary Hertog later completed a 60-day evaluation report.

All of the professional examiners testified that appellant meets the statutory criteria for civil commitment as an SDP and an SPP. Consistent with appellant's

stipulation, Dr. Meyers diagnosed appellant with several mental illnesses, including pedophilia, personality disorder with antisocial and avoidant traits, obsessive compulsive disorder, and anxiety and dysthymia disorders. He also opined that appellant has an "utter lack of power" to control his sexual impulses and that he is highly likely to re-offend. As a basis for these opinions, Dr. Meyers explained that appellant admitted to being a pedophile, that such a condition is difficult to treat, and that appellant has, in the past, successfully abused many children "who don't have the developmental capacities" to recognize, understand or communicate harm from sexual assaults. He explained that "pedophilia is not something that is going to go away" because the condition "is deeply founded in the psyche" and operates to "[lie] to one's self about one's action to legitimize sexual contact with children, or objectify children as a sexual object." Dr. Meyers also noted appellant's assertion during his interview that he would look at children and imagine them naked, as well as the concern that appellant had sexual contact with another inmate in violation of prison rules.

Dr. Reitman noted that appellant possesses consistent traits of other men who have re-offended and have traits of those highly likely to sexually re-offend, including sexual interest in children, "sexualized violence," sexual preoccupation, "emotional congruence with children," lack of empathy, impulsivity, untruthfulness, blaming his victims or his stressful life, and cunning or manipulative behavior. The actuarial analysis performed by Dr. Reitman demonstrated "an extremely high likelihood of sexual recidivism." Dr. Reitman also testified that appellant has an "utter lack of power" in controlling his sexual impulses given the nature and frequency of his sexually assaultive history and his

practice of grooming victims and intentionally placing himself into dangerous situations, such as becoming a Boy Scout leader or volunteering as a Big Brother. Consistent with testimony from Dr. Meyers, Dr. Reitman explained that appellant has "huge unfinished psychological gaps in terms of him taking full responsibility for his sexual pathology and his pedophilia."

Dr. Hoberman testified that appellant has an "utter lack of power" to control his sexual impulses as demonstrated by a lack of emotional and cognitive inhibitions preventing him from acting on sexual arousal and urges (both prior to and during confinement), a broad pool of victims, the frequency of the sexual assaults upon "captive victims" such as family members or children of friends, and the violent manner of the sexual assaults, anal intercourse, and emotional identification with children. With respect to the SDP statute, Dr. Hoberman stated that appellant has sexual and personality disorders that do not allow him to adequately control his sexual impulses as evidenced by his "extended and frequent history of sexually acting out, as well as his instance of sexually acting out while incarcerated."

Dr. Hoberman testified that some of the lower actuarial analyses from the DOC were incorrect and relied upon incorrect or incomplete information. He explained that "most of the risk assessment measures only counted adjudicated offenses or detected offenses," that appellant successfully abused many children without detection, and that actuarial measures "just begin to, in effect, allude and hint at his relative risk," which is "certainly higher given the number of victims and the frequency of the sexual offending." He acknowledged appellant's participation in the MSOP-DOC program, but nevertheless

opined that it would be inappropriate to release appellant back into the community because "MSOP isn't sufficient to lower the risk of most sex offenders who participate in that program" and because of his "well established, well engrained mental conditions." Notably, he described appellant as "in the upper five percent of those people that I have opined meet the criteria for commitment."

All three examiners testified that release under ISR would not be sufficient given the breadth of appellant's history of abuse, appellant's cognitive distortions of his behavior, and the lack of adequate community controls upon release. As support for his conclusion that such community controls would be inadequate, Dr. Meyers noted that even though appellant was in prison, as soon as he was released from MSOP into the general prison population, he committed an impermissible sexual encounter with another inmate. Dr. Meyers testified that the gradual transition or integration into the community afforded by MSOP at Moose Lake or St. Peter would be preferable, since such transition would involve more specialized programs designed for sex offenders. Finally, Dr. Hertog, at the review hearing, opined that appellant presents a high risk for sexual re-offense despite completion of the MSOP-DOC program and stated that appellant "continues to require further sex offender treatment to address his deviant sexual arousal" through "intense transition in treatment in the community."

Appellant relies heavily upon testimony from MSOP officials and his DOC parole officer. Joel Hanson served as appellant's probation officer for less than a year after his original conviction in 1994 and would serve as appellant's ISR parole officer upon his release from custody. Despite limited contact with appellant between 1997 and 2011, the

year prior to trial, Mr. Hanson testified that, prior to going to prison, appellant did "quite well" in residential treatment and did not re-offend after re-entering the community. Release onto ISR status, which would last for the duration of his parole given his status as a level III sex offender, would involve a 60-day stay at a halfway house, GPS monitoring, and a requirement that he find housing and employment. The supervision would include polygraph testing, drug and alcohol testing, and unannounced visits. Appellant would also have access to community outpatient sex-offender treatment involving one group per week and individual therapy sessions once every two or three weeks. Mr. Hanson opined that he would be able to adequately supervise appellant as a public safety risk and that "[t]his is the first time I've been in a commitment hearing when I've been in favor of the individual being released." However, he admitted that he is not involved in any evaluation of whether appellant needs additional treatment or what motivates appellant to avoid further sexual abuse.

Thomas Lundquist, clinical director at MSOP, testified that the core DOC and DHS programs provided the same "psychoed[ucational] programming" and measures of success, the difference being that, during the final phase, DHS clients transfer to the gradual reintegration site at St. Peter for supervised activities outside the secured perimeter. Mr. Lundquist referenced various actuarial analyses from MSOP determining that appellant presented a moderate to low risk and stated that achievement of the goals set forth during successful treatment operated to decrease his dynamic risk factors. He also stated that appellant's risk management and provisional discharge plan can assist him in maintaining the reduction of risk and harm to others. If appellant were civilly

committed, Mr. Lundquist opined that he would enter the re-integration phase at St. Peter where he could review and update his relapse prevention plan, participate in the Community Support Program, and eventually petition for provisional discharge. However, he also recognized that individuals who return to the general prison population after completion of the MSOP-DOC program have a limited opportunity to demonstrate skills obtained from treatment when compared to a treatment unit. Mr. Lundquist also stated that appellant presents a moderate risk to re-offend and that the treatment needs identified by MSOP would be available were appellant released in outpatient aftercare services.

Appellant admits that he still experiences deviant attraction to children once or twice a month, such as through dreams or seeing children on television. He testified that he receives social support mostly from family members and a close friend and acknowledges that he will experience stress upon re-entering the community in terms of housing and employment. He admitted that it is possible that he would re-offend, but claimed that he does not sexualize children "as often." At the review hearing, appellant testified that he still becomes aroused when he sees pictures of children.

D E C I S I O N

I.

We review the district court's civil-commitment decision to determine whether the district court complied with the statutory prerequisites for civil commitment and whether the evidence supports the district court's findings, which will not be set aside unless they are clearly erroneous. *In re Schaefer*, 498 N.W.2d 298, 300 (Minn. App. 1993). Whether

there is sufficient evidence to satisfy the standard for civil commitment is a question of law, which we review de novo. *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994) (*Linehan I*). "The record is viewed in the light most favorable to the trial court's decision." *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). "Where the findings of fact rest almost entirely on expert testimony, the trial court's evaluation of credibility is of particular significance." *Id.* A petition for civil commitment as a SDP or SPP must be proved by clear and convincing evidence. *In re Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006), *review denied* (Minn. June 20, 2006).

1. SPP and SDP Commitment Criteria

> "Sexual psychopathic personality" means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters, if the person has evidenced, by a habitual course of misconduct in sexual matters, an utter lack of power to control the person's sexual impulses and, as a result, is dangerous to other persons.

Minn. Stat. § 253B.02, subd. 18b.

> Commitment pursuant to [the SPP] statute requires there be (a) a habitual course of misconduct in sexual matters, (b) an utter lack of power to control sexual impulses so that (c) it is likely the person will attack or otherwise inflict injury, loss, pain, or other evil on the objects of their uncontrolled and uncontrollable desire.

In re Preston, 629 N.W.2d 104, 110 (Minn. App. 2001). "If a person has the ability to control the sexual impulse, the standard for commitment is not met." *In re Pirkl*, 531 N.W.2d 902, 907 (Minn. App. 1995), *review denied* (Minn. Aug. 30, 1995). "When there

is conflicting evidence as to the existence of a psychopathic personality, the question is one of fact to be determined by the trial court upon all the evidence." *Id.*

A "sexually dangerous person" means 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). This requirement does not depend on a showing that the person has a complete inability to control his sexual impulses. Minn. Stat. § 253B.02, subd. 18c(b).

Appellant argues that he is not likely to engage in acts of harmful sexual conduct. Commitment is warranted if his disorder "does not allow [him] to adequately control [his] sexual impulses," with the result that he is "highly likely" to engage in harmful sexual conduct. *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*); *In re Linehan*, 557 N.W.2d 171, 179–80 (Minn. 1996) (*Linehan III*) (holding that statutory phrase "likely to engage in acts of harmful sexual conduct" means that offender is "highly likely" to do so), *vacated on other grounds*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand*, 594 N.W.2d 867 (Minn. 1999).

The stipulations and testimony clearly establish that appellant suffers from emotional instability and impulsiveness of behavior and lacks good judgment despite his extended participation in treatment. He has also engaged in a habitual course of sexual misconduct. Instead, appellant's argument focuses on whether he has an utter lack of power to control his sexual impulses.

2. Inability to Control Sexual Impulses

Factors identified by the supreme court as relevant to a determination of whether the person exhibits a lack of control include: (1) the nature and frequency of sexual assaults; (2) the degree of violence involved; (3) the relationship between offender and victims; (4) the offender's attitude and mood; (5) the offender's medical and family history; and (6) the results of testing and evaluation. *Pirkl*, 531 N.W.2d at 907–08; *see also In re Blodgett*, 510 N.W.2d 910, 915 (Minn. 1994).

The district court did not err by concluding that appellant's habitual course of sexual misconduct demonstrates an utter lack of power to control his impulses. The highly deviant nature and frequency of appellant's history of sexual assaulting minor children was well-established by the evidence. While appellant stresses that he has not re-offended after his initial conviction, the examiners[1] noted that appellant has been incarcerated and confined to environments where children were not present since his conviction. *See Pirkl*, 531 N.W.2d at 909 (discounting arguments as to the absence of recent sexual assaults where patient had extended periods of incarceration).

Appellant stresses that his sexual assaults did not include acts of violence towards his victims. However, this notion was roundly rejected by the examiners, who explained that an adult committing highly deviant sexual acts upon impressionable and vulnerable

[1] Appellant argues that this court should question the credibility of the examiners' testimony because none were engaged in the process of treating patients with conditions similar to appellant. However, he fails to explain how this particular fact bears on the credibility of the examiners' opinions and conclusions. There were no disputes regarding the examiners' respective credentials to testify as experts at trial. Instead, their occupations and expertise as forensic psychologists are particularly suited to provide evidence relative to the SDP and SPP commitment criteria.

children is inherently violent, especially given the numerous sexual acts, including penetration and ejaculation. *See Preston*, 629 N.W.2d at 113 (explaining that, for purposes of the SPP statute, the mere lack of "physical injury collateral to [the] assaults themselves . . . does not mean that [the] assaults were non-violent" when one "only engage[s] in the amount of force necessary to accomplish his will on very young victims"). Given appellant's numerous young victims, "[i]t would be absurd to hold that because less force was needed to subdue an extremely young victim, the assault was non-violent." *Id.* It is uncontested that two of his victims have committed suicide. The nature and chronicity of appellant's history of sexual abuse clearly supports the district court's findings relative to this factor.

Appellant's relationships with his victims are particularly troubling. Evidence established that appellant victimized family members, including his sons, neighbors, and a child he mentored as a Big Brother. Dr. Reitman also highlighted his practice of grooming victims and intentionally placing himself into dangerous situations. We note that appellant identified his family as his main source of social support upon release.

With respect to his attitude and mood, appellant stresses that he has exhibited a heightened level of remorse and accountability throughout his treatment. This was highlighted by Mr. Hanson and MSOP officials. However, the examiners noted the relatively limited value that self-recognition of past wrongs and cognitive distortions have in a purely therapeutic environment, as well as the possibility that appellant knew to present a positive image in treatment out of fear of future commitment proceedings. Dr. Meyers was concerned that, despite completion of treatment, appellant still displayed

troubling cognitive distortions by surmising that he never would have re-offended if he had come out as gay at a young age. Also, contrary to appellant's contention, his favorable quarterly reviews while in treatment were not directly relevant to his control of his pedophilia or sexual impulses, but were relevant to appellant's routine behavior around MSOP.

Finally, appellant's medical history, testing, and evaluation also support the district court's conclusion. The examiners consistently testified that appellant has been diagnosed with several mental illnesses. Dr. Reitman noted that appellant possesses traits consistent with and similar to those of other men who have re-offended and possesses traits of those who are highly likely to sexually re-offend. Appellant's testimony revealed that he had developed six or seven different cognitive distortions which he utilized to explain or rationalize his sexual acts relative to his 123 minor victims. Notably, all examiners testified that testing upon appellant establishes that he meets the criteria as a SPP and a SDP. The record does not provide any basis to question the district court's credibility determinations in favor of the examiners' testimony.

3. Likelihood of Future Dangerous Behavior

We also conclude that the district court did not err by concluding that it is likely that appellant will engage in future dangerous behavior. After finding utter uncontrollability of sexual impulses, the district court, in predicting serious danger to the public, should consider certain factors if such evidence is presented:

> (a) the person's relevant demographic characteristics (e.g., age, education, etc.); (b) the person's history of violent behavior (paying particular attention to recency, severity, and

> frequency of violent acts); (c) the base rate statistics for violent behavior among individuals of this person's background (e.g., data showing the rate at which rapists recidivate, the correlation between age and criminal sexual activity, etc.); (d) the sources of stress in the environment (cognitive and affective factors which indicate that the person may be predisposed to cope with stress in a violent or nonviolent manner); (e) the similarity of the present or future context to those contexts in which the person has used violence in the past; and (f) the person's record with respect to sex therapy programs.

Pirkl, 531 N.W.2d at 909 (quoting *Linehan I*, 518 N.W.2d at 614) (quotation marks omitted). "[T]he guidelines for dangerousness prediction in *Linehan I* apply to the SDP Act." *Linehan* III, 557 N.W.2d at 189. As such, the *Linehan I* factors as applied to the above SPP analysis apply to the determination of whether appellant is highly likely to engage in harmful sexual conduct for purposes of the SDP statute. *See Stone*, 711 N.W.2d at 840 ("Regardless of whether the state seeks commitment as an SDP, which requires an examination of the likelihood that the offender will reoffend, or as an SPP, which depends on a conclusion of future dangerousness, the court must consider six factors."). "No single factor is determinative of this complex issue." *In re Navratil*, 799 N.W.2d 643, 649 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011).

The examiners consistently testified that appellant is highly likely to re-offend, noting the diagnosis of pedophilia and the inability to cure this condition. Appellant is 49 years old and is a high school graduate with limited technical and vocational training. The district court noted Dr. Hoberman's concern that appellant began sexually offending at an unusually young age.

Testimony was clear that appellant has engaged in a particularly deviant and wide-ranging course of past criminal sexual conduct against 123 minor victims. While appellant argues that he has not committed a sexual offense against a minor since his 1994 conviction, he has been in prison during that time period and therefore, such evidence does not provide substantial evidentiary support negating his dangerousness. *See In re Bobo*, 376 N.W.2d 429, 432 (Minn. App. 1985) (noting that good behavior in artificial environment "is not determinative" of dangerousness, where experts testify the patient remains mentally ill and dangerous). The examiners were also concerned that appellant engaged in a sexual act with another inmate after his completion of treatment at MSOP-DOC, notwithstanding the fact that this was not considered a re-offense for purposes of treatment.

The individual tests administered to appellant were compiled by the district court and display the relative inconsistency of the testing. Despite the inconsistencies, examiners testified that the overall results of the testing clearly indicate that appellant poses a high risk of sexually re-offending, and that the lower results are explained by the fact that some did not consider the large amount of unreported sexual misconduct. Appellant's argument simply points out the inconsistent actuarial testing without explaining how such inconsistencies establish that he does not satisfy the SPP or SDP statutes. *See Pirkl*, 531 N.W.2d at 907 (noting that conflicting evidence as to the existence of a psychopathic personality is a question of fact to be determined by the trial court); *see also In re Linehan III*, 557 N.W.2d at 189 (stating that "dangerousness prediction methodology is complex and contested").

There was also evidence relating to the stressors and triggering factors that precipitated appellant's past criminal sexual conduct. Even in his therapeutic environment, appellant stated that he still becomes aroused by children once or twice a month. There is no evidence that the stimulants causing his arousal would not exist while appellant is released on ISR. The district court noted that, if appellant were released, he would be subjected to stress in attempting to find independent housing and employment, which could trigger acting on his sexual impulses.

With respect to "the similarity of the present or future context to those contexts in which the person has used violence in the past," the district court noted that release on ISR would provide appellant with a relatively quick transition to a life of his own within the community. For instance, there was testimony that the ISR program would allow appellant, after only eight months of parole, to not have to report until a curfew of 10:30 p.m. The examiners consistently stressed that appellant currently requires a much higher level of supervision than what IRS can provide.

Finally, it is undisputed that appellant has successfully completed the MSOP-DOC program. However, the significance of this treatment was downplayed by the examiners because appellant remains incapable of controlling his sexual impulses and is highly likely to re-offend. The evidence establishes that pedophilia cannot be cured, can merely be controlled, and that treatment is not, by itself, sufficient to address appellant's danger to society. *See Pirkl*, 531 N.W.2d at 910 ("The trial court, however, concluded that Pirkl has not been changed by his treatment programs and remains likely to reoffend if given

the opportunity."). Based upon this record, the district court did not err by determining that appellant is highly likely to re-offend in the future.

II.

Appellant next argues that the record fails to support the finding that no less restrictive alternative to civil commitment exists. The district court concluded that ISR is not consistent with appellant's treatment needs and that appellant failed to establish by clear and convincing evidence that releasing appellant under ISR would be consistent with public safety.

"In commitments under this section, the court shall commit the patient to a secure treatment facility unless the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient's treatment needs and the requirements of public safety." Minn. Stat. § 253B.185, subd. 1(d) (2012). "[T]he burden of proving that a less-restrictive program is available is on the patient." *In re Robb*, 622 N.W.2d 564, 574 (Minn. App. 2001), *review denied* (Minn. Apr. 17, 2001). This court will not reverse a district court's findings on the propriety of a treatment program unless its findings are clearly erroneous. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

We conclude that the district court did not err by determining that there is no less-restrictive program sufficient to address appellant's needs and condition. The district court essentially weighed competing testimony from the examiners, his former probation officer, and the director of MSOP. The examiners were uncompromising in asserting that there are no less-restrictive alternatives to civil commitment at MSOP. While appellant's

completion of MSOP through the DOC is notable, the examiners highlighted that appellant is highly likely to recidivate and stressed the fact that appellant's treatment and purported advancements occurred apart from children. Appellant noted that, even in this setting, he is still aroused by children. The director of MSOP testified that aftercare treatment programs and services were available in ISR, but recognized that individuals who return to the general prison population after completion of the MSOP-DOC program have a limited opportunity to demonstrate whether they have incorporated the skills learned in treatment. He noted that, if appellant were civilly committed, he would have the opportunity to progress to the re-integration phase at St. Peter before being released. Given the inadequacies and unknowns of ISR, the district court did not err in crediting the opinion of the examiners over that of appellant's former probation officer and the director of MSOP.

III.

Finally, appellant argues that his due process rights were violated because he was denied treatment after arriving at MSOP from the DOC. "Once a patient is admitted to a treatment facility pursuant to a commitment under this subdivision, treatment must begin regardless of whether a review hearing will be held under subdivision 2." Minn. Stat. § 253B.18, subd. 1(b) (2012); *see also* Minn. Stat. § 253B.02, subd. 17(b) (2012) (providing that persons committed as a SPP or SDP are subject to provisions applying to persons who are mentally ill and dangerous to the public). Appellant cites no authority beyond this statute as to why such a denial mandates that his commitment be vacated and that he be released to the DOC. Section 253B.18, subdivision 1(b), does not provide a

definition of "treatment" for purposes of this requirement. Nor is such a definition provided in Minn. Stat. § 253B.02 (2012).

At the review hearing, Dr. Hertog testified that clients placed at MSOP-DHS are not typically allowed in the treatment program until they are determined committed and conceded that "one of the paradoxes of being placed in MSOP prior to any term of the commitment is that they typically aren't allowed in the sex offender treatment program until they are determined committed."

Based upon the record, we conclude that appellant is not entitled to relief based upon his experience at MSOP-DOC prior to his indefinite commitment. Appellant has already completed treatment at MSOP-DOC, and its clinical director testified that, if appellant were committed, he would progress to the re-integration phase at St. Peter and possibly petition for provisional discharge. This would be conducted pursuant to Minn. Stat. § 253B.18, subd. 5(a) (2012); *see also id.*, subd. 3 (2012) ("After a final determination that a patient is a person who is mentally ill and dangerous to the public, the patient shall be transferred, provisionally discharged or discharged, only as provided in this section."); Minn. Stat. § 253B.02, subd. 17(b).

Here, appellant has already completed treatment at MSOP-DOC. His civil commitment trial was originally scheduled for August 4 and 5, 2011, but was rescheduled and delayed until January 2012 by agreement of the parties. Appellant offers no explanation concerning the type of treatment he should have received during the pendency of his commitment proceedings and cites no authority supporting the remedy that any denial of treatment must result in vacating the commitment. Thus, we cannot

conclude that he has been deprived of due process under section 253B.18, subdivision 1(b).

Affirmed.