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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0716**

In the Matter of the Civil Commitment of: Brad Ronald Stevens.

**Filed September 5, 2017
Affirmed
Klaphake, Judge**

Judicial Appeal Panel
File No. AP16-9053
Goodhue County File No. 25-P9-04-001747

Brad Ronald Stevens, Moose Lake, Minnesota (*pro se* appellant)

Lori Swanson, Attorney General, Ali Afsharjavan, Assistant Attorney General, St. Paul, Minnesota; and

Stephen N. Betcher, Goodhue County Attorney, Erin N. Kuester, Assistant County Attorney, Red Wing, Minnesota (for respondent state)

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Klaphake, Judge.*

UNPUBLISHED OPINION

KLAPHAKE, Judge

Self-represented appellant Brad Ronald Stevens is civilly committed as a sexually dangerous person. He petitioned for a full discharge from the Minnesota Sex Offender

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

Program. The judicial appeal panel granted the commissioner of human services' motion to dismiss his petition. We affirm.

DECISION

I.

Stevens argues that the judicial appeal panel erred in granting the commissioner's motion under Minnesota Rule of Civil Procedure 41.02(b) to dismiss his petition for a full discharge from the Minnesota Sex Offender Program (MSOP).

A person who is committed as a sexually dangerous person (SDP) may petition the special review board (SRB) for a discharge. Minn. Stat. § 253D.27, subd. 2 (2016). "The special review board shall hold a hearing on each petition before issuing a recommendation," *id.*, subd. 3(a), and "shall issue a report with written findings of fact . . . recommend[ing] denial or approval of the petition," *id.*, subd. 4. If the SRB recommends denial of the petition, the committed person "may petition the judicial appeal panel . . . for a rehearing and reconsideration of" the recommendation. Minn. Stat. § 253D.28, subd. 1(a) (2016). Before the judicial appeal panel in a phase-I hearing, the committed person "bears the burden of going forward with the evidence, which means presenting a prima facie case with competent evidence to show that the person is entitled to the requested relief," and "must establish by a preponderance of the evidence that the transfer is appropriate." *Id.*, Subd. 2(d).

If the commissioner wishes to challenge a petitioner's prima facie case, the commissioner may move to dismiss the petition pursuant to rule 41.02(b) of the Minnesota Rules of Civil Procedure, which provides, in relevant part:

After the plaintiff has completed the presentation of evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law, the plaintiff has shown no right to relief.

Minn. R. Civ. P. 41.02(b); *see also Coker v. Jesson*, 831 N.W.2d 483, 490-91 (Minn. 2013) (holding that other provisions of rule 41.02(b) do not apply to proceedings before judicial appeal panel because of conflict with Minn. Stat. § 253B.19, subdivision 2(d)). In considering such a motion, the judicial appeal panel “may not weigh the evidence or make credibility determinations.” *Coker*, 831 N.W.2d at 490. “Instead, the Appeal Panel is required to view the evidence produced at the first-phase hearing in a light most favorable to the committed person.” *Id.* at 491. This court applies a de novo standard of review to a judicial appeal panel’s grant of a rule 41.02(b) motion to dismiss, and “‘examine[s] the record to determine whether the evidence as a whole sustains the appeal panels’ findings.’” *Larson v. Jesson*, 847 N.W.2d 531, 534 (Minn. App. 2014) (quoting *Jarvis v. Levine*, 364 N.W.2d 473, 474 (Minn. App. 1985) (quotation omitted)).

A person who is committed as an SDP may be fully discharged only if

it appears to the satisfaction of the judicial appeal panel, after a hearing and recommendation by a majority of the special review board, that the committed person is [1] capable of making an acceptable adjustment to open society, [2] is no longer dangerous to the public, and [3] is no longer in need of inpatient treatment and supervision.

In determining whether a discharge shall be recommended, the special review board and judicial appeal panel shall consider whether specific conditions exist to provide a reasonable degree of protection to the public and to assist the committed person in adjusting to the community. If

the desired conditions do not exist, the discharge shall not be granted.

Minn. Stat. § 253D.31 (2016).

In August 2005, the Goodhue County District Court ordered Stevens to be committed to the MSOP as an SDP for an indeterminate period. In July 2015, Stevens petitioned the special review board (SRB) for a full discharge, among other things. The SRB held a hearing on Stevens's petition, and ultimately concluded that Stevens does not meet the criteria for a full discharge, and recommended denial of his petition.

Stevens asked the judicial appeal panel to reconsider the SRB's recommendation. In April 2016, the judicial appeal panel held a phase-I hearing. Stevens had one witness testify on his behalf, Robert Riedel, a licensed psychologist who Stevens retained. Riedel's report was not admitted into evidence for lack of foundation. Stevens and the commissioner submitted the report of a court-appointed examiner, which was admitted into evidence, and which recommended against a discharge. After Stevens rested his case, the commissioner moved to dismiss Stevens's petition pursuant to rule 41.02(b), and the county joined the motion.

On March 22, 2017, the judicial appeal panel issued its findings of fact, conclusions of law, and order granting the commissioner's motion to dismiss and denying Stevens's petition for a full discharge. In its findings of fact, the judicial appeal panel reviewed Riedel's testimony in great detail. In its conclusions of law, the judicial appeal panel wrote:

Here, the SRB did not recommend full discharge, and the sole evidence presented by [Stevens] at the March 10, 2017 Hearing was the testimony of Dr. Riedel, which included Dr. Riedel's conclusions that [Stevens] is an untreated sex

offender and untreated chemical dependent, and that [Stevens] will need structure when he leaves MSOP. Although Dr. Riedel opined that [Stevens] could be successfully released, the evidence presented was not competent, but, rather, speculative, at best.

The judicial appeal panel concluded that Stevens failed to meet the criteria for a full discharge under Section 253D.31.

A. Need for Inpatient Treatment

Stevens contends that Riedel's testimony does not support a finding that he still is in need of inpatient treatment. He points to Riedel's testimony that Stevens does not have a paraphilic disorder, that his chemical-dependency concerns are "not severe," and that he has not incurred any discipline violations at the MSOP. But Riedel also testified that Stevens "doesn't have any clinical progress in traditional sex offender treatment." He testified that Stevens's current clinical needs are "to develop an understanding of his offense cycle." He testified, "Outside of living day-to-day and in terms of facing up to his crimes, he has been somewhat floundering." He testified that Stevens "does exercises in Scientology, but from what I have seen it doesn't really confront the personality issues that underlie his tendency to get into sexual situations and act improperly." Ultimately, when asked if Stevens was in need of inpatient treatment, Riedel testified:

I don't think he is. He isn't participating anyways so we need to get him into a situation where he will participate and if he were able to be on the outside, um, and do out-patient therapy, . . . that would be the best possible answer for him to get some of those insights that would guarantee him to have more ability to control those behaviors.

The relevant statutory factor requires that a committed person no longer have a *need* for inpatient treatment. *Id.* Riedel’s opinion on this factor focused on Stevens’s subjective willingness and desire to participate in such treatment, and he offered no reasoned opinion on Stevens’s needs. Further, Riedel testified that Stevens has not completed sex-offender treatment or chemical-dependency treatment, and that the Scientology-based treatment methodologies used by Stevens are not supported by clinical studies.

Thus, the record supports the judicial appeal panel’s conclusion that Stevens presented no competent evidence that he is no longer in need of inpatient treatment. *See id.*

B. Dangerousness to the Public

Stevens contends that Riedel’s testimony does not support the judicial appeal panel’s conclusion that he is a danger to the public. However, Riedel testified that Stevens’s lack of participation in sex-offender treatment “doesn’t reduce what his danger was or is by any significant amount,” but that he did not believe Stevens’s risk “was that high to begin with.” He testified that “his risk is relatively marginal and it is certainly below the highly likely level.” Riedel testified that Stevens “does need some security” to accomplish his treatment goals, and that his untreated chemical-dependency issues could pose a risk of danger to the public.

Thus, the record supports the judicial appeal panel’s conclusion that Stevens presented no competent evidence that he is no longer a danger to the public. *See id.*

C. Adjustment to Open Society

Stevens contends that Riedel's testimony does not support the judicial appeal panel's conclusion that he is not capable of making an acceptable adjustment to open society. Riedel opined that Stevens does not possess sufficient skills to cope with a full discharge. He testified that Stevens lacks the capacity to deal with the stress of living in open society, that he would "be under a great deal of distress," and that a transfer to community preparation services would be preferable to a full discharge. Thus, the record supports the judicial appeal panel's conclusion that Stevens presented no competent evidence that he is capable of adjustment to open society. *See id.*

In sum, Riedel's testimony, if proven, would not satisfy the three statutory criteria for a full discharge. *Id.*; *see also Coker*, 831 N.W.2d at 486.

II.

Stevens argues that the judicial appeal panel erred by relying on inadmissible evidence. Specifically, he contends that the judicial appeal panel relied on the commissioner's exhibits in finding that he had not made a prima facie case for a full discharge, and that the judicial appeal panel "should have waited until the second-phase hearing to consider such evidence." However, this argument has no merit because the judicial appeal panel relied on only Riedel's testimony. In fact, the judicial appeal panel's findings refer exclusively to Riedel's testimony.

Stevens also contends that the judicial appeal panel abused its discretion by relying on evidence that is inadmissible due to issue preclusion or collateral estoppel. Specifically, he contends that the commissioner presented evidence of Stevens's

underlying crimes and sexual conduct to “challeng[e] Stevens’ original commitment, which the Panel relied upon to deny Stevens discharge.” But this argument lacks merit for the same reason as above. The judicial appeal panel’s findings refer exclusively to Riedel’s testimony.

Thus, the judicial appeal panel did not rely on inadmissible evidence in making its determination.

III.

Stevens argues that the judicial appeal panel erred by granting the commissioner’s motion to dismiss because continued treatment at MSOP is antithetical to his religious beliefs in Scientology and Dianetics,¹ and thus continued confinement at MSOP impinges his right to freely exercise religion. He contends that his continued supervision at the MSOP violates his right under the Minnesota Constitution “to worship God according to the dictates of his own conscience.” Minn. Const. art. I, § 16; *see also Hill-Murray Fed’n of Teachers v. Hill-Murray High Sch.*, 487 N.W.2d 857, 864-65 (Minn. 1992). Stevens failed to raise his religious-freedom argument to the judicial appeal panel. We do not consider issues on appeal that were not raised below. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see also Henning v. Vill. of Prior Lake*, 435 N.W.2d 627, 632 (Minn. App.

¹ Riedel testified that Stevens “has recently has become a convert to Scientology.” He testified that “the basic conflict in Scientology is with the founder of Scientology had an intense hatred of psychiatry so he condemns all psychiatric and psychological processes, so . . . they certainly do not condone any type of psychological or psychotherapy practices.”

1989) (refusing to address constitutional argument not raised below), *review denied* (Minn. Apr. 24, 1989).

IV.

Lastly, Stevens argues that he was deprived of his statutory right to effective assistance of counsel at the hearing before the judicial appeal panel. A committed person has the statutory right to assistance of counsel in commitment proceedings. Minn. Stat. § 253D.20 (2016). However, when a committed person wishes to raise an ineffective-assistance claim, they must do so by a motion pursuant to rule 60.02 of the Minnesota Rules of Civil Procedure because “the Commitment Act does not provide any procedures for a patient indeterminately committed as an SDP . . . to raise nontransfer, nondischarge claims such as ineffective assistance of counsel.” *In re Civil Commitment of Lonergan*, 811 N.W.2d 635, 642 (Minn. 2012). Stevens raises his ineffective-assistance claim in a direct appeal from the judicial appeal panel’s dismissal of his petition for a discharge. Thus, Stevens’s ineffective-assistance claim is not properly before us.

Affirmed.