

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1175**

In the Matter of the Civil Commitment of: Steven Allan Housman.

**Filed December 26, 2017
Affirmed
Reilly, Judge**

Judicial Appeal Panel
File No. AP15-9099
Chippewa County File No. 12-PR-08-1104

Robert L. Gjorvad, Runchey, Louwagie & Wellman, P.L.L.P., Marshall, Minnesota (for appellant Steven Allan Housman)

Lori Swanson, Attorney General, Anthony R. Noss, Assistant Attorney General, St. Paul, Minnesota (for respondent State of Minnesota)

David M. Gilbertson, Chippewa County Attorney, Montevideo, Minnesota (for respondent Chippewa County)

Considered and decided by Worke, Presiding Judge; Rodenberg, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant Steven Allan Housman argues that the judicial appeal panel (the panel) erred by denying his petition for a full discharge from the Minnesota Sex Offender Program (MSOP). Because we agree with the panel that appellant did not meet the statutory criteria for discharge from civil commitment, we affirm.

FACTS

Appellant has a history of harmful sexual conduct committed against children under the age of ten. In 2009, the district court indeterminately committed appellant to MSOP as a sexually dangerous person (SDP) and as a sexually psychopathic person (SPP). This court affirmed appellant's commitment on appeal. Appellant thereafter petitioned the special review board (the SRB) for a full discharge from civil commitment. The SRB recommended that appellant's petition for a full discharge from MSOP be denied, and appellant filed a petition for rehearing and reconsideration with the panel. Following a two-phase hearing during which the panel received numerous exhibits and heard testimony from multiple witnesses, including appellant, the panel adopted the SRB's recommendation to deny appellant's petition in its entirety and denied appellant's petition for a full discharge from civil commitment. This appeal follows.

DECISION

"This court reviews a judicial appeal panel's decision for clear error, examining the record to determine whether the evidence as a whole sustains the panel's findings." *Matter of Civil Commitment of Kropp*, 895 N.W.2d 647, 650 (Minn. App. 2017), *review denied* (June 20, 2017) (citing *Larson v. Jesson*, 847 N.W.2d 531, 534 (Minn. App. 2014)). "In this review, we do not reweigh the evidence as if trying the matter de novo." *Id.* "If the evidence as a whole sustains the panel's findings, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Id.* (citation omitted). However, we review questions of statutory construction and the application of statutory criteria to the facts de novo. *Id.*

A person civilly committed as an SDP/SPP may petition the SRB for discharge from commitment. Minn. Stat. § 253D.27, subd. 2 (2016). The SRB “shall hold a hearing” on the petition and, within 30 days of the hearing, “shall issue a report with written findings of fact and shall recommend denial or approval of the petition to the judicial appeal panel. . . .” *Id.*, subds. 3(a), 4. The committed person may petition the panel for rehearing and reconsideration of the SRB’s decision. Minn. Stat. § 253D.28, subd. 1(a) (2016). Minnesota law enumerates three factors to be considered in determining whether a discharge petition should be granted, and provides that a civilly committed person shall not be discharged unless:

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 capable of making an acceptable adjustment to open society, is no longer dangerous to the public, and is no longer in need of inpatient treatment and supervision.

Minn. Stat. § 253D.31 (2016); *see also Call v. Gomez*, 535 N.W.2d 312, 319 (Minn. 1995) (“To justify discharge, the statutory discharge criteria for persons committed as mentally ill and dangerous to the public require a showing that the person is capable of making an acceptable adjustment to open society, is no longer dangerous to the public, and is no longer in need of inpatient treatment and supervision.”).

Application of the statutory criteria must “comport[] with the basic constitutional requirement that the nature of commitment bear some reasonable relation to the purpose for which the individual [was originally] committed.” *Call*, 535 N.W.2d at 318 (citations and quotations omitted). Thus, a person committed as an SDP/SPP “must be discharged if

no reasonable relation exists between the original reason for commitment and the continued confinement.” *Id.* at 319. The petitioning party bears the burden of coming forward with the evidence and presenting a prima facie case, with competent evidence, demonstrating entitlement to the requested relief. Minn. Stat. § 253D.28, subd. 2(d) (2016). If the petitioning party meets this burden of production, the commissioner of human services bears the burden of proving by clear and convincing evidence that the discharge should be denied. *Id.*

The commissioner satisfied the statutory burden here. The panel determined that the commissioner “ha[d] shown by clear and convincing evidence that the petition for full discharge should be denied” under section 253D.28, subdivision 2(d), and *Call*. The panel’s decision is supported by each of the three statutory factors articulated in Minnesota Statutes section 253D.31, regarding appellant’s ability to make an acceptable adjustment to open society, the threat of danger he poses to the public, and his continuing need for inpatient treatment and supervision.

Acceptable adjustment to open society

The panel determined that the commissioner proved by clear and convincing evidence that appellant was incapable of making an acceptable adjustment to open society.

The panel found that:

[Appellant’s] non-participation in sex offender treatment and his ongoing behavioral issues, including the failure to comply and abide by facility rules, persuades this Panel that [appellant] continues to have treatment needs that can only be addressed in his present setting, and that at present [he] cannot successfully transition into open society. [He] remains a danger to the public.

The evidence sustains the panel's findings. At the judicial review hearing, the commissioner called Peter Puffer, a licensed psychologist and the clinical director at MSOP. Puffer testified that appellant's discharge petition "was not supported by MSOP clinical leadership." Puffer testified that appellant was "not a participant in treatment at MSOP," "ha[d] not consented to participate in treatment," and had not successfully completed a sex offender treatment program. Puffer also testified that appellant's history revealed "multiple failures to comply with direction," including refusing to sign release conditions, violating his release, and failing to respond well in the community. The commissioner also called Dr. Lauren Herbert, a licensed psychologist who oversees risk assessments for civilly committed individuals in MSOP. Herbert agreed that appellant was incapable of making an acceptable adjustment to open society. The commissioner presented a Sexual Violence Risk Assessment Update, authored by Herbert, in which she opined that

[Appellant] has not participated nor made sufficient progress in sex offense specific treatment programming. While it does not appear [he] has engaged in sexually aggressive behaviors [at MSOP], his victim pool is largely documented as minor victims; access to such individuals is restricted in his current setting. Thus, it remains unclear as to whether or not he could control his sexually abusive behavior in the community.

Appellant argues that he would make an acceptable adjustment to open society because he has a strong employment history, which would allow him to obtain employment immediately, and is eligible to receive VA benefits. Even assuming this assertion is true, the panel's factual findings on this factor are supported by the evidence and are not clearly erroneous.

Danger to the public

The panel determined that appellant remains a danger to the public. The panel found that appellant “has never expressed interest nor has he consented to participation in treatment at MSOP,” and “remain[ed] a non-participant in the offered treatment programming.” The panel heard testimony from MSOP’s clinical leadership that appellant was “in denial of essential elements of his sexual offense history” and “continue[d] to represent a danger to the public given his lack of accountability.” The panel found that, given appellant’s failure to participate in sex offender treatment and his ongoing behavioral issues that could only be addressed in commitment, “[he] remains a danger to the public.”

The evidence supports these findings. Herbert testified that appellant “still poses a danger to the public.” Herbert submitted a report stating that “[i]f granted a discharge, without treatment efforts, there is little assurance [appellant] would refrain from [alcohol or substance] use; in turn, exposing the community to risk.” The panel also reviewed a sexual violence risk assessment report from forensic evaluator Elisa Tattar, in which she indicated that appellant “is presently a non-participant in the three-phase treatment program and his remaining treatment need areas are not indicative of reduced treatment or [community] supervision.” Tattar’s report indicated that appellant’s records show that he had “beliefs associated with hostility toward women” and exhibited “impulsive behavior.”

Appellant argues that the panel erred by not properly crediting conflicting testimony. Robert Riedel, a licensed psychologist specializing in forensic practice, testified that appellant had “reached a level of dangerousness and a level of understanding that he was no longer a danger to the public and could be safely released.” Appellant

contends that Riedel's testimony "clearly show[s]" that appellant is no longer a danger to the public. The panel disagreed. The panel considered the evidence from Riedel, Herbert, and Tattar, and determined that Herbert and Tattar's reports were "credible" and their "clinical judgment persuasive." The panel weighed Riedel's report against the other evidence offered and found the reports of Tattar and Herbert to be "more persuasive" than Riedel's report. This court does not "reweigh the evidence as if trying the matter de novo," and, "[i]f the evidence as a whole sustains the panel's findings, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Matter of Civil Commitment of Kropp*, 895 N.W.2d at 650. The evidence, as a whole, sustains the panel's finding that appellant represents a danger to the public.

Inpatient treatment and supervision

The panel found that the commissioner demonstrated by clear and convincing evidence that appellant "continues to require inpatient treatment and supervision." The facts support this finding. Puffer testified that appellant continued to need "further inpatient treatment and supervision for a sexual disorder." Puffer noted that "historically and at present, multiple examiners have identified [appellant] as having a pedophilic disorder or simply an attraction to children," but that, despite these diagnoses, appellant "actively resisted any opportunity that he's been offered to engage in a change process and remains steadfast in his refusal to address those issues." Herbert testified that appellant had a pedophilic disorder, other specified personality disorders with antisocial features, and severe alcohol use disorder. Tattar similarly diagnosed appellant with pedophilic disorder and noted that "[t]he diagnosis of Pedophilic Disorder involves recurrent and

intense fantasies, urges, and/or behavior involving sexual arousal toward prepubescent children.” Both Herbert and Tattar opined that appellant continued to require inpatient treatment. The panel found Herbert and Tattar’s reports credible, found that appellant had “not engaged in MSOP treatment programming,” and noted that the records were “unclear as to whether [he] successfully completed any outpatient sex offender treatment.” The panel’s finding that this factor weighed against discharge is sustained by the evidence as a whole.

In sum, we determine that the commissioner established by clear and convincing evidence that appellant does not satisfy the three-factor test articulated in Minnesota Statutes section 253D.31 and *Call* for a full discharge from civil commitment at MSOP, and we therefore affirm.

Affirmed.