

*This opinion will be unpublished and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
A18-0240**

In re the Civil Commitment of:
Arthur Dale Senty-Haugen

**Filed July 16, 2018
Affirmed
Smith, Tracy M., Judge**

Judicial Appeal Panel
File No. AP17-9049

Rick E. Mattox, Prior Lake, Minnesota (for appellant)

Lori Swanson, Attorney General, R.J. Detrick, Assistant Attorney General, St. Paul,
Minnesota (for respondent Commissioner of Human Services)

John Choi, Ramsey County Attorney, Stephen P. McLaughlin, Assistant County Attorney,
St. Paul, Minnesota (for respondent Ramsey County)

Considered and decided by Smith, Tracy M., Presiding Judge; Cleary, Chief Judge;
and Connolly, Judge.

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

SMITH, TRACY M., Judge

Appellant Arthur Senty-Haugen appeals from the judicial appeal panel's denial of his petition for provisional discharge, full discharge, or transfer, arguing that he established a prima facie case for discharge and that the preponderance of the evidence supported transfer. We affirm.

FACTS

Treatment History

On March 29, 1996, Senty-Haugen was civilly committed as a sexually psychopathic personality (SPP) and a sexually dangerous person (SDP). His special review board (SRB) treatment report indicates that, since his commitment, Senty-Haugen has been “intermittently” treated in the Minnesota Sex Offender Program (MSOP) “over the years; however, his participation” has been “inconsistent” due to repeated transfers from MSOP to either the Minnesota Department of Corrections (DOC) or the Federal Bureau of Prisons (FBP) to serve time for crimes committed while civilly committed.

MSOP is a three-phase treatment program. Phase I focuses on general self-management, adherence to program rules, and treatment-interfering behaviors and beliefs. Once committed persons have demonstrated the ability to manage their emotions and behaviors and to recognize the necessity of making personal changes, they may be considered for Phase II. Phase II focuses on the committed persons’ offending patterns and the identification and resolution of underlying issues and motivations related to the offending behaviors. Once committed persons have adequately addressed their sexual deviance and motivations in their offending behavior and developed effective strategies to manage their risk for re-offense, they progress to Phase III. Phase III is the transitional phase of treatment and focuses on deinstitutionalization and community reintegration. Committed persons in Phase III who have demonstrated and maintained meaningful change advance through gradually increased liberty and privileges that include staff-supervised outings into the community.

By 2000, Senty-Haugen had entered Phase III, but he was then transferred to DOC after being convicted of financial-transaction fraud. When he returned to MSOP in 2003, he was placed in Phase I. He progressed to Phase II in less than a year but was again incarcerated in 2004 after pleading guilty to federal tax fraud. He briefly returned to MSOP, where he had more sex-offender-specific treatment, but was then transferred to federal prison to serve his sentence in 2005. In federal prison, he participated in a sex-offender management program. In January 2009, Senty-Haugen returned to MSOP, and he was again placed in Phase I. From January 2015 to March 2016, Senty-Haugen was again incarcerated in state prison, for bribery.

In July 2016, Senty-Haugen again began Phase I at MSOP. He advanced to Phase II by late September. However, in June 2017, Senty-Haugen was moved back to Phase I because he violated Phase II expectations by not attending therapeutic treatment for two months and by possessing contraband.

In August 2017, Senty-Haugen was federally indicted on charges “related to conspiracy to defraud.” Senty-Haugen’s conditional federal bail required that he “avoid all contact, directly or indirectly, with any person who is or may be a victim or witness.” Several individuals in Senty-Haugen’s living unit were potential witnesses, and, as a result, MSOP moved Senty-Haugen to a more restrictive environment. Because of the transfer, Senty-Haugen could not attend some of the sessions necessary to progress through the phases of treatment.

Procedural History

On July 13, 2016, Senty-Haugen filed a petition with the SRB for provisional discharge, full discharge, or transfer to Community Preparation Services (CPS). The SRB held a hearing on March 14, 2017, at which a sexual-violence risk assessor, an assessment psychologist, the MSOP associate clinical director, and Senty-Haugen testified. After considering the testimony and written submissions, the SRB recommended denying Senty-Haugen's petition.

Senty-Haugen then filed a petition for rehearing and reconsideration with the judicial appeal panel. The judicial appeal panel held a hearing on December 15, 2017, where Senty-Haugen and a court-appointed reviewing psychologist testified. The psychologist testified that he did not support provisional or full discharge. Regarding transfer, the psychologist testified:

I did not recommend [transfer to] CPS because I did not see that it was possible under the present conditions. [Senty-Haugen] is now in isolation. He hasn't been in treatment, and they haven't worked out a possibility to integrate him into the program because of the fact that he is isolation, and I didn't feel if they do not think he is capable of participating in treatment, that I can recommend over and above what they're doing that they should be forced to make him participate.

Upon further questioning, however, the psychologist conceded that "a fundamental expectation of that therapeutic community at [CPS] is that the clients who enter into that community are motivated, are compliant, and are functioning at a very high level," that Senty-Haugen did not fit with that expectation, and that the failure to meet this expectation was another reason "why [he] did not recommend transfer."

After Senty-Haugen concluded presenting his evidence, the commissioner of human services moved to dismiss Senty-Haugen’s petition under Minn. R. Civ. P. 41.02(b). The judicial appeal panel took the motion under advisement and subsequently issued an order granting the commissioner’s motion and denying Senty-Haugen’s petition.

Senty-Haugen appeals.

D E C I S I O N

I. Senty-Haugen failed to establish a prima facie case for discharge.

Senty-Haugen argues that the judicial appeal panel erred in granting the commissioner’s motion to dismiss his petition for full or provisional discharge because he presented a prima facie case showing he was entitled to discharge. We review de novo the judicial appeal panel’s dismissal of a discharge petition at the close of a petitioner’s case-in-chief. *Foster v. Jesson*, 857 N.W.2d 545, 549 (Minn. App. 2014).

The commissioner’s motion to dismiss was made pursuant to Minn. R. Civ. P. 41.02(b), which provides:

After the plaintiff has completed the presentation of evidence, the defendant . . . may move for a dismissal on the ground that upon the facts and the law, the plaintiff has shown no right to relief. In an action tried by the court without a jury, the court as trier of the fact may then determine the facts and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52.01.

“This rule operates differently depending on whether the judicial appeal panel is considering a petition for transfer or for discharge.” *Foster*, 857 N.W.2d at 548.

Generally, when a proceeding is a bench trial (as is the case in hearings before the judicial appeal panel), the court may determine facts and is not required to view those facts in the light most favorable to the plaintiff when ruling on a rule 41.02(b) motion. *Coker v. Jesson*, 831 N.W.2d 483, 489-90 (Minn. 2013). However, by statute, the party seeking discharge or provisional discharge bears only “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.” Minn. Stat. § 253D.28, subd. 2(d) (2016). If that burden is met, the burden shifts to the party opposing such discharge, who “bears the burden of proof by clear and convincing evidence that the discharge or provisional discharge should be denied.” *Id.* As a result, the judicial appeal panel “may not weigh the evidence or make credibility determinations when considering a motion to dismiss [a discharge or provisional-discharge petition] under Rule 41.02(b),” but rather “is required to view the evidence produced . . . in a light most favorable to the committed person.” *Coker*, 831 N.W.2d at 490-91.

To meet this burden for either provisional or full discharge, Senty-Haugen must produce evidence sufficient to establish a prima facie case that he “is capable of making an acceptable adjustment to open society.” Minn. Stat. § 253D.30, subd. 1(a) (2016) (discussing provisional discharge); Minn. Stat. § 253D.31 (2016) (discussing full discharge).

Senty-Haugen argues that he established his prima facie case by showing that he is not receiving appropriate treatment in MSOP and because the commissioner failed to prepare a provisional-discharge plan. We are unpersuaded. Assuming, as we must, that

Senty-Haugen is not receiving appropriate treatment, a lack of appropriate treatment is not evidence that a maltreated committed person is capable of making an acceptable adjustment to open society. Although it may give rise to other remedies,¹ a lack of appropriate treatment does not entitle Senty-Haugen to discharge. For similar reasons, we reject Senty-Haugen’s argument that the failure of the commissioner to prepare a provisional-discharge plan created an obligation on the part of the judicial appeal panel to accept *his* proposed provisional-discharge plan.²

Finally, Senty-Haugen argues that he established a prima facie case for provisional discharge because the components of the provisional-discharge plan that he created, “coupled with six years in federal prisons and federal supervised release[,] will provide a reasonable degree of protection to the public and will enable [him] to adjust successfully to the community.” This argument is also unavailing. The court-appointed expert at the judicial appeal panel hearing recommended against provisional discharge, and, other than Senty-Haugen’s own self-serving testimony, no evidence presented at the judicial appeal panel hearing supported provisional discharge. If a committed person’s own, otherwise unsupported, testimony were enough to establish a prima facie case, then every judicial appeal panel hearing would devolve into the committed person merely saying the “magic

¹ At oral argument, Senty-Haugen suggested that he could obtain a remedy for not receiving proper treatment by seeking a writ of mandamus against the commissioner. We take no position on whether such a course of action is available or likely to succeed in this case, confining ourselves to what remedies are available under the civil commitment statutes.

² As with his lack-of-appropriate-treatment argument, we take no position on whether other remedies may be appropriate for such a failure on the part of the commissioner.

words” in order to avoid a rule 41.02(b) motion. *Cf. Banbury v. Omnitrition Int’l, Inc.*, 533 N.W.2d 876, 881 (Minn. App. 1995) (“A self-serving affidavit . . . is not sufficient to create a genuine issue of material fact.”). We therefore conclude that Senty-Haugen failed to establish a *prima facie* case for provisional or full discharge.

II. The judicial appeal panel’s determination that Senty-Haugen should not be transferred is not clearly erroneous.

Senty-Haugen also argues the judicial appeal panel erred in granting the commissioner’s motion to dismiss his petition for transfer to CPS because a preponderance of the evidence demonstrated that transfer was appropriate. “[U]nlike a discharge petition, a petition for transfer imposes the burdens of production *and* persuasion on the petitioner at the hearing before the judicial appeal panel.” *Foster*, 857 N.W.2d at 548 (citing Minn. Stat. § 253D.28, subd. 2(e) (Supp. 2013)). Thus, the judicial appeal panel may weigh evidence in evaluating such a motion. *See id.* (“Because the petition for transfer imposed the burden of persuasion on appellant, there is no ‘conflict’ between the commitment statute and rule 41.02(b); thus, the reasoning of *Coker* . . . is inapplicable to his transfer petition.”). We therefore review the dismissal of a transfer petition under Minn. R. Civ. P. 41.02(b) for clear error. *Id.*

To obtain a transfer to CPS, Senty-Haugen had to show that “the transfer is appropriate.” Minn. Stat. § 253D.29, subd. 1(a) (2016). In determining whether transfer is appropriate, the judicial appeal panel must consider: “(1) the person’s clinical progress and present treatment needs; (2) the need for security to accomplish continuing treatment; (3) the need for continued institutionalization; (4) which facility can best meet the person’s

needs; and (5) whether transfer can be accomplished with a reasonable degree of safety for the public.” *Id.*, subd. 1(b) (2016).

Senty-Haugen argues that it was clear error for the judicial appeal panel to dismiss his transfer petition because the judicial appeal panel failed to “credit any of Mr. Senty-Haugen’s prior sex offender treatment.” This past treatment goes to the first factor the judicial appeal panel must consider: “the person’s clinical progress and present treatment needs.”

The record indicates that the judicial appeal panel gave appropriate consideration to Senty-Haugen’s past treatment. In the memorandum supporting its decision, the judicial appeal panel noted that Senty-Haugen “has a history of attending sex offender treatment through the MN-DOC, MSOP, and the Federal Bureau of Prisons” and specifically acknowledged his request that “he be given ‘credit’ for participating in these other treatment programs or for completing certain units or modules through other programs.” The judicial appeal panel rejected this request, weighing the evidence that “the treatment records indicate that [Senty-Haugen] intermittently struggled with treatment participation.” This evidence supports the judicial appeal panel’s decision, and we will not reweigh that evidence on appeal. *In re Civil Commitment of Fugelseth*, 907 N.W.2d 248, 256 (Minn. App. 2018), *review denied* (Minn. Apr. 17, 2018).

Senty-Haugen also points to the court-appointed psychologist’s testimony that Senty-Haugen had the necessary foundation to be transferred to CPS and that “what he needs to do is to begin to prepare to leave the facility and to go through the reintegration materials.” Although this testimony, by itself, does support transfer, we must also consider

that the psychologist ultimately did not recommend transfer because of the restrictions created by Senty-Haugen's federal bail conditions and because Senty-Haugen did not meet the expectations of those transferred to CPS. These other considerations counsel against transfer, based on two of the other factors the judicial appeal panel is required to consider—the need for security to accomplish continuing treatment and which facility can best meet the person's needs. The judicial appeal panel duly weighed these factors, found that “[t]here was no evidence in the therapeutic record that [Senty-Haugen] had advanced far enough in treatment to successfully manage the program at CPS, where patients are expected to be transparent and self-police their own behaviors,” and dismissed Senty-Haugen's petition. Based on our review of the record, that dismissal was not clearly erroneous.

III. The judicial appeal panel is without authority to order additional treatment.

Finally, Senty-Haugen argues that, even if the judicial appeal panel properly dismissed his petition for provisional discharge, full discharge, or transfer, the judicial appeal panel should have ordered additional treatment. The commissioner argues that the judicial appeal panel is without authority to do so. Whether a particular tribunal has the authority to order a particular remedy presents a question of law that we review *de novo*. See *State v. Johnson*, 851 N.W.2d 60, 65 (Minn. 2014).

“The Commitment Act only provides relief to a patient indeterminately committed as an SDP or SPP through a transfer or a discharge.” *In re Civil Commitment of Lonergan*, 811 N.W.2d 635, 641-42 (Minn. 2012). This holding straightforwardly applies to this case. Senty-Haugen cannot use the judicial-appeal-panel-petition process to obtain review of

treatment decisions made by MSOP. The judicial appeal panel did not err by refusing his request to order additional treatment.

Affirmed.