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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0347**

In the Matter of the Civil Commitment of: Percy Jones.

**Filed July 30, 2018
Affirmed
Schellhas, Judge**

Ramsey County District Court
File No. 62-MH-PR-16-593

Kathleen K. Rauenhorst, Rauenhorst & Associate, P.A., Roseville, Minnesota (for appellant Percy Jones)

John Choi, Ramsey County Attorney, Timothy Carey, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County)

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his indeterminate commitment as mentally ill and dangerous. We affirm.

FACTS

In December 2016, respondent Ramsey County petitioned to commit appellant Percy Jones as mentally ill and dangerous (MID). The district court ordered Jones's initial commitment and conducted a final determination hearing in October 2017. At the hearing,

the district court received the following exhibits: the Minnesota Security Hospital (MSH) 60-day report by Dr. Stephanie Bruss, Dr. Thomas Alberg's report, Dr. Peter Meyer's report, and MSH records from March 9, 2017 through July 17, 2017.

Following the hearing, the district court concluded that "clear and convincing evidence was presented . . . that [Jones] continues to be a person who is [MID]," and that "there is no evidence of a less restrictive alternative that is available to meet both [Jones's] treatment needs and the needs of public safety other than treatment at the [MSH]." In reaching its decision, the district court relied heavily upon the report submitted by Dr. Bruss, who concluded that "the treatment program at MSH is most appropriate for Mr. Jones." Based on the reports of Dr. Meyers and Dr. Alberg, the district court also concluded that Jones meets the statutory criteria for commitment as MID and therefore committed Jones as an MID person for an indeterminate period of time.

This appeal follows.

D E C I S I O N

Under Minnesota law, a district court "shall commit the person to a secure treatment facility or to a treatment facility willing to accept the patient under commitment" if it "finds by clear and convincing evidence that [a] proposed patient is a person who is [MID] to the public." Minn. Stat. § 253B.18, subd. 1(a) (2016). A proposed patient is MID if he or she (1) is mentally ill and (2) as a result of that mental illness, presents a "clear danger to the safety of others" as demonstrated by the facts that the proposed patient has "engaged in an overt act causing or attempting to cause serious physical harm to another" and there is a "substantial likelihood" that the proposed patient "will engage in acts capable of inflicting

serious physical harm.” Minn. Stat. § 253B.02, subd. 17 (2016). The district court may decline to commit a person who meets the MID criteria to a secure treatment facility only if the proposed patient establishes by clear and convincing evidence that a less-restrictive treatment program is available that is consistent with the proposed patient’s treatment needs and the requirements of public safety. Minn. Stat. § 253B.18, subd. 1(a).

This court reviews a district court’s civil-commitment decision to determine whether the district court complied with the statute and whether the evidence in the record supports the findings of fact. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). The district court’s factual findings are reviewed for clear error to determine whether they are supported by the record as a whole. *In re Civil Commitment of Ince*, 847 N.W.2d 13, 22 (Minn. 2014). We view the record in the light most favorable to the district court’s decision and give due regard to the district court’s opportunity to judge the credibility of witnesses. *Knops*, 536 N.W.2d at 620. But we review de novo the issue of whether the facts satisfy the statutory criteria for commitment. *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994).

Jones challenges the district court’s order indeterminately committing him as MID. Although Jones concedes that he “suffers from a mental illness,” he argues that (A) the county did not prove by clear and convincing evidence that he caused or attempted to cause harm to another; (B) the county did not prove by clear and convincing evidence that a substantial likelihood existed that he would engage in acts capable of inflicting serious physical harm to another; and (C) he demonstrated by clear and convincing evidence that a less-restrictive alternative to commitment was available.

Harm to another

An individual may not be committed as MID unless the individual performed at least one “overt act causing or attempting to cause serious physical harm to another.” Minn. Stat. § 253B.02, subd. 17(a)(2)(i). A person attempts to cause serious physical harm if the overt dangerous act is *capable* of causing serious physical harm. *In re Jasmer*, 447 N.W.2d 192, 195 (Minn. 1989). Because the term “serious,” is not defined in the statute, Minnesota courts have used the common understanding of the word for interpretation. *In re Lufsky*, 388 N.W.2d 763, 765–66 (Minn. App. 1986).

Jones argues that he does not meet the statutory criteria to be held for an indeterminate period of time as MID because no evidence shows that he caused serious physical harm or that he intended to cause physical harm. We disagree. The record here reflects that from 1990 to 2004, Jones was incarcerated in Indiana for voluntary manslaughter, stemming from an incident in which Jones shot and killed a security guard during an attempted automobile theft. The record also reflects that Jones was incarcerated in Minnesota for several years following an assault in 2007. The events of the 2007 assault involved Jones threatening to kill his girlfriend with a knife, cutting her “throat with the tip of the knife,” and chasing her through her apartment. *State v. Jones*, No. A09-0932, 2010 WL 2265610, at *1 (Minn. App. June 8, 2010), *review denied* (Minn. Aug. 10, 2010). Jones also woke his girlfriend’s infant daughter, and threatened to kill the infant unless his girlfriend gave him money. *Id.* Also in 2007, Jones’s mother reported that Jones “violently choked her on the kitchen floor after being prompted to take a bath.” She believed that Jones “intended to kill her,” and that without her husband’s intervention, she would have

sustained serious injury. This record provides ample evidence supporting the district court's determination that Jones engaged in overt acts causing or attempting to cause serious physical harm.

Substantial likelihood of future harm

Jones also challenges the district court's determination that a substantial likelihood exists that he will engage in acts capable of inflicting serious harm on another. To satisfy this element, the state must prove by clear and convincing evidence that Jones poses a substantial likelihood of engaging in acts capable of inflicting serious physical harm in the future. See Minn. Stat. § 253B.02, subd. 17(a)(2)(i) (defining MID). A district court's consideration of past conduct is appropriate in determining the likelihood of future danger. See *Carroll*, 706 N.W.2d at 531 (considering patient's records, which were "replete with documentation of violent outbursts and physical assaults"). As discussed above, Jones has a history of violent conduct, including convictions of manslaughter and assault. The record also describes a tragic incident in 1992, during Jones's incarceration in Indiana, when inmates lit Jones on fire after pouring gasoline on him while he slept. As a result, Jones suffered significant burns that required skin grafts. According to Dr. Bruss's report, after being burned, Jones began hearing voices and was diagnosed with paranoid schizophrenia. Jones nonetheless consistently denies his mental illness. He told Dr. Bruss that nothing is wrong with him and denied any need for treatment.

Dr. Bruss reported that Jones "has a significant history of noncompliance with his medications, particularly when not under court supervision," and has a history of "becoming very violent when decompensated." For example, Dr. Bruss reported that in

August 2011, Jones made ““intimidating/threatening statements towards staff,”” including that if staff ““keep f-cking with me, they will see what’s up!”” The records also reflect a report in March 2015 that other inmates were afraid of Jones. Dr. Bruss also recounted that Anoka Metro Regional Treatment Center records indicate that between July 2015 and March 2017, Jones had 14 documented incidents of aggression and threatening behaviors, including several threats to kill staff members.

In addition to Jones’s violent behavior in correction and treatment facilities, Jones has displayed similar conduct toward relatives. As noted above, Jones “violently choked” his mother. And in December 2015, shortly after being discharged from incarceration on his sentence for assault, and while residing in his son’s home, Jones stopped taking his medications and began showing “increased paranoia and displaying bizarre behaviors,” prompting his son to call police “due to concerns for the safety of small children.”

Based on Jones’s behaviors, Dr. Bruss concluded that a substantial likelihood exists that Jones will engage in acts capable of inflicting serious physical harm on another. Specifically, she determined:

overall, results of the HCR-20-V3¹ . . . suggests that Mr. Jones is at an increased baseline risk of engaging in future violent acts due to a number of historical risk factors. Moreover, his risk for future violence is further elevated beyond the baseline by the aforementioned dynamic (clinical) risk factors, and when considering any reduction of supervision, such as a return to the community, his risk is further elevated beyond baseline by several risk management factors. Mr. Jones has

¹ “The HCR-20-V3 is a research driven instrument designed to structure clinical judgments and facilitate assessments of risk for interpersonal violence, defined as actual, attempted, or threatened infliction of physical or serious psychological harm on another person, with some degree of willfulness.”

engaged in an overt act, resulting in the fatality of his victim. It appears as though his mental illness developed after this overt act. However, since the development of his mental illness, he has persistently and frequently acted out aggressively both in the community and in institutional settings. Mr. Jones has a significant history of psychiatric decompensation in the context of medication noncompliance and a history of aggression and violence when he decompensates. Mr. Jones has virtually no insight into his mental illness or its link to his aggressive behavior, and his concomitant need for treatment. Mr. Jones continues to exhibit fixed, treatment refractory, delusional beliefs of paranoid ideation (e.g., that others are trying to kill him), and has made several comments that he will physically defend himself against those trying to harm him.

(footnote added). The other two court-appointed examiners echoed Dr. Bruss's concerns, concluding that a substantial likelihood exists that Jones will engage in acts capable of inflicting serious physical harm on another.

In sum, the record is replete with evidence supporting the district court's conclusion that a substantial likelihood exists that Jones will engage in acts capable of inflicting serious physical harm to others. The district court therefore did not err by concluding that Jones meets the statutory requirements to be committed as MID.

Less-restrictive alternative

A district court may decline to commit a person who meets the criteria for MID to a secure treatment facility only if the person establishes by clear and convincing evidence that a less-restrictive treatment program is available that is consistent with the person's treatment needs and the requirements of public safety. Minn. Stat. § 253B.18, subd. 1(a). We consider the record to determine whether the evidence as a whole substantially supports the district court's conclusion. *Ince*, 847 N.W.2d at 22.

Jones argues that a less-restrictive alternative treatment program is available because “[b]y ordinary commitment as mentally ill under Minn. Stat. § 253B.02, subd. 13, the county and court could establish conditions which would control his ability to commit the acts upon which this commitment is predicated.” But Jones has the burden to establish the availability of a less-restrictive alternative treatment program, and he offers no evidence to support his position. Moreover, the record overwhelmingly reflects that such an alternative is not available. *See* Minn. Stat. § 253B.18, subd. 1(a) (explaining requirements for commitment). For example, Dr. Meyers’s report details Jones’s “Psychiatric Treatment and Placement History.” Since Jones’s release from Indiana State Prison in 2005, and notwithstanding his time served in Minnesota State Prison for his assault conviction, Jones has spent the majority of the last 13 years in psychiatric-treatment facilities. As noted above, he failed to adhere to his medication regimen after discharge to his son’s home in December 2015 and quickly decompensated, resulting in police intervention. All of the examiners opined that no less-restrictive alternative is available, and Jones failed to rebut the evidence. Accordingly, the district court did not err by indeterminately committing Jones as MID.

Affirmed.