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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1290**

In the Matter of the Civil Commitment of:
Jose Luis Gutierrez.

**Filed December 24, 2018
Affirmed
Rodenberg, Judge**

Ramsey County District Court
File No. 62-MH-PR-17-109

Kathleen K. Rauenhurst, Roseville, Minnesota (for appellant Jose Luis Gutierrez)

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Considered and decided by Rodenberg, Presiding Judge; Hooten, Judge; and
Stauber, Judge.*

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Jose Luis Gutierrez appeals from the district court's order indeterminately civilly committing him as a sexually dangerous person (SDP) and as a sexual psychopathic personality (SPP). We affirm.

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

FACTS

Appellant was born in Brooklyn, New York, in 1973. He came to Minnesota in 1996 to avoid prosecution for an assault allegedly committed against his girlfriend when he beat her, struck her in the head with closed fists, and bit her. Since 1996, appellant has continued to commit both violent and sex-related offenses and has spent most of his adult life either incarcerated or under supervision. Appellant's conviction history includes assault, criminal sexual conduct, disorderly conduct, false imprisonment, driving while impaired (DWI), obstruction of legal process, and a drug felony. Many of appellant's convictions have involved extreme violence toward women.

In 2002, appellant brutally beat and sexually assaulted his then-girlfriend, H.V. Appellant locked the apartment door so that H.V. could not leave. He then repeatedly punched H.V. in the face and head and sat on her. During the assault, appellant wore gloves to ensure that he would not injure his hands. Appellant poked H.V. in the nose and ears with a coat hanger, jabbed her repeatedly with a fork, and clamped each of H.V.'s toes with a pair of pliers. After torturing her, appellant forced H.V. to look at her bruises in the mirror, forced H.V. to disrobe, and then raped her. Appellant pleaded guilty to felony assault for this offense. While police were investigating the assault, H.V. reported several other instances of sexual violence by appellant. H.V. reported that she came home from work one day and appellant beat her through the night. H.V. reported that appellant told her that he would kill her if she was ever unfaithful. H.V. stated that during another incident, appellant cinched a belt around her neck.

In July 2009, appellant picked up a 17-year-old female and forced the girl, M.G.H., to stay in the car and then to come into his home. At his home, appellant forced M.G.H. onto a bed, fondled her, pulled off her clothes, pinned her down, and raped her. M.G.H. asked appellant to stop, and appellant became angry and pulled a handgun out of his closet and asked M.G.H. if she had ever had a gun pointed at her. M.G.H. was unable to leave because she feared that if she tried to escape appellant would kill her. M.G.H. was not able to get free until the next day, when she called police.

In September 2009, appellant threatened to shoot, cripple, and kill a different 17-year-old female. That same month, J.L.P., a 16-year-old female, reported that she met appellant, gave him her phone number and, on several occasions, snuck out of her home to have sex with him. On one occasion, appellant became angry, hit J.L.P., and threatened to kill her.

Appellant pleaded guilty to criminal sexual conduct, terroristic threats, and false imprisonment charges for the 2009 offenses against the three teenagers, and received concurrent sentences.

The state filed its petition to commit appellant as SDP and SPP in August 2017. Appellant was then serving three executed felony sentences. Dr. Andrea Lovett prepared a prepetition report, and the court appointed two examiners. Dr. Peter Meyers was appointed by the court to examine appellant, and Dr. Thomas Alberg was appointed as appellant's requested second examiner. All three examiners determined that appellant has a high degree of psychopathy and paraphilia and that his history of sexual violence renders

him extremely likely to commit further sexual violence. At trial, all three examiners agreed that appellant meets both the SDP and SPP criteria.

Dr. Alberg's report included that appellant's history includes domestic assault, terroristic threats, violation of orders for protection, and fifth-degree assault. The report also noted that appellant has a history of dating adolescent women, and that appellant "has openly admitted to an attraction to 'much younger females.'"

Dr. Meyers's report also summarized appellant's sexual history and his violent offenses. Dr. Meyers determined that appellant meets the diagnostic criteria for antisocial personality disorder and is a psychopath. Dr. Meyers also determined that appellant meets the criteria for sexual sadism, a paraphilia that is difficult to treat.

Before the civil commitment trial, appellant moved the district court to stay the commitment proceedings. Appellant argued that he should not be placed in the Minnesota Sex Offender Treatment Program (MSOP) because the program is lacking in structure and because he was not given the opportunity to participate in effective sex-offender treatment during his previous incarcerations. Appellant also claimed that his attorney was not adequately trained to represent him, and that her appointment violated his rights. The district court denied appellant's motion.

The district court held a civil commitment trial in April 2018. During the trial, J.K., a special investigator for the Department of Corrections (DOC), testified that she reviewed a March 2016 email that appellant sent H.V. (a previous victim and girlfriend) while he was incarcerated. In the email, appellant told H.V., "I no longer feel bad for crashing your b---h a-- all them yrs ago! . . . So u got wat u deserved. . . . I pray to Satan u catch AIDS,

n die slow.” J.K. testified that, although appellant had taken several anger-management classes, it did not appear that he had applied those principles to his life.

Drs. Lovett, Meyers, and Alberg also testified. Dr. Lovett testified that “it is abundantly clear that [appellant] is a very substantial risk to other people.” Drs. Alberg and Meyers testified that each believes appellant meets the criteria for SDP and SPP.

Appellant also testified. Most of appellant’s testimony involved explaining that he pleaded guilty to previous offenses to “get [them] out of the way” and that he had admitted to the offenses because his lawyers told him to do so. He denied raping H.V., and denied using pliers, a hanger, and a fork to torment her. Appellant called three other witnesses, who spoke of their relationship with him, but none offered testimony relating to appellant’s criminal history or whether appellant satisfied the statutory criteria for commitment. The district court indeterminately committed appellant to the MSOP as SDP and SPP.

This appeal followed.

D E C I S I O N

A person may be civilly committed as SDP or SPP if the statutory criteria are proved by clear and convincing evidence. Minn. Stat. § 253D.07, subd. 3 (2018). We review a district court’s factual findings on the elements of the civil commitment statutes for clear error. *In re Civil Commitment of Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006), review denied (Minn. June 20, 2006). “Where the findings of fact rest almost entirely on expert testimony, the [district] court’s evaluation of credibility is of particular significance.” *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). But whether the evidence is sufficient to meet the statutory requirements for commitment is a question of law, which we review de

novo. *In re Civil Commitment of Crosby*, 824 N.W.2d 351, 356 (Minn. App. 2013), *review denied* (Minn. Mar. 27, 2013).

Appellant argues that the evidence is insufficient to commit him as SDP and SPP, because he only has one conviction for criminal sexual conduct. But appellant provides no legal citation or analysis to support his assertion that one criminal-sexual-conduct conviction is insufficient to support commitment. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (stating that because appellant’s pro se supplemental brief contained “no argument or citation to legal authority in support of the allegations” those arguments are waived); *State v. Ture*, 632 N.W.2d 621, 632 (Minn. 2001) (noting that appellant failed to provide any authority or argument to support several of his claims and therefore those claims were waived); *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997) (“Where a defendant asserts error, but fails to address the error in his appellate brief, the issue is deemed waived.”), *review denied* (Minn. Aug. 5, 1997). We nevertheless interpret appellant’s argument to be that the evidence to support his commitment is insufficient.

I. The evidence supports the district court’s determination that appellant is a sexually dangerous person.

A person may be committed as SDP if the person “(1) has engaged in a course of harmful sexual conduct . . . ; (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.” Minn. Stat. § 253D.02, subd. 16(a) (2018). The statute does not require the state to prove that the person has an inability to control his sexual impulses. *Id.*, subd. 16(b) (2018). In order to commit a person as SDP, there must be clear-and-convincing evidence

that the person is highly likely to engage in future acts of harmful sexual conduct. *See In re Civil Commitment of Ince*, 847 N.W.2d 13, 20-22 (Minn. 2014).

A. Course of harmful sexual conduct

In order to commit appellant as SDP, the district court must first find that appellant has engaged in a course of harmful sexual conduct. Harmful sexual conduct is defined as “sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another.” Minn. Stat. § 253D.02, subd. 8(a) (2018). A “course of conduct” is defined by its ordinary meaning, which is a “systemic or orderly succession; a sequence.” *In re Civil Commitment of Ramey*, 648 N.W.2d 260, 268 (Minn. App. 2002) (quotation omitted), *review denied* (Minn. Sept. 17, 2002).

Appellant argues that the offenses included in his criminal history do not meet the criteria for a course of sexual misconduct, again because he has only one conviction for criminal sexual conduct. He also argues that, although he has previous felony convictions for assaulting women with whom he was in a sexual relationship, we should not take those convictions into account because appellant did not assault those women for the purpose of having sex with them.

The record does not support either of appellant’s arguments. The district court found that appellant’s “previous crimes are relevant to [a] course of sexual misconduct because they both involved sexual relationships with teenaged girls, who [appellant] had just recently met, intertwined with extreme violence toward the [victims] which evidence [appellant’s] escalating pattern of sexual violence towards young females.” The record supports the district court’s determination. The record evidences a course of harmful

misconduct, and appellant has continued to commit such offenses when not incarcerated. *See In re Robb*, 622 N.W.2d 564, 573-74 (Minn. App. 2001) (noting that the existence of a period in which a person has not committed sex offenses does not preclude a determination that he engaged in a course of sexual misconduct), *review denied* (Minn. Apr. 17, 2001).

The fact that appellant's convictions include only one for criminal sexual conduct is of little consequence. What matters here is what appellant did. The district court correctly and properly took into account the totality of appellant's criminal history. *See Stone*, 711 N.W.2d at 837 ("An examination of whether an offender engaged in a course of harmful sexual conduct takes into account both conduct for which the offender was convicted and conduct that did not result in a conviction."). The record supports the district court's determination that a course of harmful sexual conduct is present.

B. Manifestation of a sexual, personality, or mental disorder

The second element of the SDP determination requires a district court to find that the person has manifested a sexual, personality, or other mental disorder or dysfunction. Minn. Stat. § 253D.02, subd. 16(a)(2).

Appellant does not dispute the district court's conclusion that he manifests a qualifying disorder. Instead, he argues that despite his diagnoses for paraphilia, personality disorders, and substance-abuse disorder, he is able to manage his sexual impulses, because he has committed "only one crime against a woman for the purpose of having sexual contact with her." Three psychologists concluded that appellant has a sexual, personality, or other mental disorder. Those experts diagnosed appellant with paraphilia, sadism,

personality disorders, substance disorders, and concluded that appellant exhibits a high degree of psychopathy. The record contains no contrary expert opinion.

Dr. Lovett explained that appellant's sexual misconduct continued from 1998 to 2009, despite appellant's multiple convictions and incarcerations. She noted that appellant's "character pathology likely exacerbates his lack of adequate control over his sexual behavior by causing him to: (1) disregard the wishes, rights, and feelings of other people; (2) experience anger and emotional dysregulation; and, (3) focus on meeting his own needs and desires—including sexual desires—without considering the appropriateness, legality, or impact of his actions on others." Dr. Meyers reported that appellant is highly likely to sexually reoffend because appellant has "zero insight into the harm that he has caused his victims." Dr. Alberg similarly concluded that appellant's paraphilia and personality disorder combined with his history render him highly likely to commit further sexual crimes. The record supports the district court's determination concerning the second SDP element

C. Likelihood of engaging in acts of harmful sexual misconduct

Finally, the district court must determine whether appellant is likely to engage in acts of harmful sexual conduct. Minn. Stat. § 253D.02, subd. 16(a)(3). To determine whether a person is highly likely to reoffend, a district court must engage in a multi-factor analysis. *See Ince*, 847 N.W.2d at 22-23. The multi-factor analysis includes consideration of

- (a) the person's relevant demographic characteristics . . . ;
- (b) the person's history of violent behavior . . . ; (c) the base rate statistics for violent behavior among individuals of this

person's background . . . ; (d) the sources of stress in the environment . . . ; (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.

Id. at 22 (quoting *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994)). The multi-factor analysis may include other relevant evidence and information, and includes the actuarial assessment evidence used by the experts. *Id.* at 23-24. No single factor is determinative. *In re Civil Commitment of Navratil*, 799 N.W.2d 643, 649 (Minn. App. 2011).

All three experts agreed that appellant is highly likely to engage in harmful sexual misconduct. Dr. Lovett testified that appellant “has continued to rely on both the thought and behavioral patterns that characterized his substantial criminal and violent behavior in the past.” Appellant’s scores on various actuarial assessments place him in the above-average-risk range for reoffending. Dr. Alberg testified that “psychopaths are highly likely to continue to reoffend” because they “tend to be people who are not deterred very much by outside forces.”

The district court addressed the *Linehan* factors and determined that appellant is highly likely to engage in future harmful sexual conduct. The record supports the district court’s conclusion. Appellant has a lengthy history of threatening and violent behavior, and he has a limited history of employment due in part to an extensive history of arrest and incarceration. Three experts opined that appellant is an above-average risk for further sexual harm. Appellant twice had the opportunity to participate in sex-offender treatment while he was incarcerated. Appellant violated program rules and was terminated from the program on two occasions. As a result, appellant remains an untreated sex offender.

The district court's findings that appellant meets the SDP criteria are well-supported by the record. As the district court noted, appellant has continued to commit violent, sex-related offenses, and his convictions and incarcerations have not deterred him. The district court credited the expert testimony and determined that "all reports and testimony of the three doctors are clear, credible, and convincing." See *Crosby*, 824 N.W.2d at 356; see also *Knops*, 536 N.W.2d at 620 (stating that due regard is given to a district court's credibility determinations, and that the district court's evaluation of the credibility of an expert witness is significant when the findings of fact rest almost exclusively on the expert's testimony). The record supports the district court's determination that there is clear-and-convincing record evidence to show that appellant meets the SDP criteria.

II. The evidence supports the district court's determination that appellant meets the sexual-psychopathic-personality criteria.

A sexual psychopathic personality is statutorily defined as

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. § 253D.02, subd. 15 (2018). To commit someone as a person with a sexual psychopathic personality, the district court must find (1) an habitual course of misconduct involving sexual matters, (2) an utter lack of power to control sexual impulses, and (3) dangerousness to others. *Id.*; *Linehan*, 518 N.W.2d at 613.

Appellant again argues that, because he only has a single criminal sexual conduct conviction, an habitual course of misconduct is not present. The record strongly refutes appellant's argument. Despite multiple incarcerations and convictions, appellant has continued to commit violent assaults and sex-related offenses against women. His repeated sexual violence toward women and his generalized criminal behavior show an habitual course of misconduct.

Similarly, concerning the second element, appellant argues that, because he only has one criminal sexual conduct conviction, he is able to control his sexual impulses. Appellant's pattern of assaults evidence that he is someone who "fixate[s] on following through with his behavior and impulsively follows through regardless of the consequences." Dr. Meyers's report pointed to the fact that appellant's sexual-offense cycle has elicited a "knee jerk" response, as he seeks out female victims who lack maturity and whom he can manhandle and subdue. The record supports the district court's finding that "[n]o measures or interventions cause him to cease his harmful behavior."

A person is dangerous to others and subject to commitment as a sexual psychopathic personality when the person's pattern of sexual misconduct (1) creates a substantial likelihood of physical or emotional harm to others, and (2) is likely to recur because of an utter lack of power to control sexual impulses.

In re Kindschy, 634 N.W.2d 723, 732 (Minn. App. 2001) (quotation omitted), *review denied* (Minn. Dec. 19, 2001). In determining if a person is "dangerous to others," courts must consider (1) the nature and frequency of the sexual assaults, (2) the degree of violence involved, (3) the relationship between the offender and the victims, (4) the offender's attitude and mood, (5) the offender's medical and family history, (6) the results of

psychological and psychiatric testing and evaluation, and (7) other relevant factors that bear on the predatory sex impulse and lack of power to control it. *In re Blodgett*, 510 N.W.2d 910, 915 (Minn. 1994).

Appellant argues that he is not dangerous because he has tried to compete sex-offender treatment and has pleaded guilty and completed his sentences. The district court found, in part, that (1) appellant continues to sexually reoffend despite repeated criminal sanctions and treatment; (2) once appellant starts his sexual-violence cycle, he is unable to stop; (3) there is a wide range of victims, including teenagers largely unknown to appellant; (4) appellant fails to remove himself from situations where he is likely to reoffend, and (5) his last three victims fit his pattern of actively seeking out and preying upon young and vulnerable females. Finally, the district court determined that appellant continued to commit offenses even while in prison, finding that he re-victimized one of his victims after a commitment petition was filed. The record supports the district court's findings.

Dr. Alberg's report stated that appellant had begun to assault women in his early 20s and, that, although he was not charged with sexual assaults in every incident, there was a sexual component to all of the offenses and appellant continued to reoffend while in the community. Dr. Alberg's report also stated that appellant's offenses have involved a significant degree of violence—"his victims have ranged from a girl he just met, to his spouse, to people he lived with and people [he dated]." Dr. Meyers reached a similar conclusion in his report, stating that, because appellant meets the criteria for psychopathy and sexual sadism, he is even more likely to reoffend "because [appellant] is not inhibited by pain and torture," he poses an even greater risk for sexual recidivism. Dr. Lovett's

report initially indicated that appellant possibly met the *Blodgett* factors, but at trial her testimony revealed that she believed it was clear that, after review, appellant is dangerous and unable to control his impulses.

The reports and trial testimony support the district court's findings that appellant meets the statutory criteria for SPP. The district court properly determined that appellant meets the statutory criteria for commitment as both SDP and SPP.

Affirmed.