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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1367**

In the Matter of the Civil Commitment of: Charles Richard Stone.

**Filed March 4, 2019
Affirmed
Reyes, Judge**

Supreme Court Appeal Panel
File No. AP15-9123

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Keith Ellison, Minnesota Attorney General, Ali P. Afsharjavan, Assistant Attorney General, St. Paul, Minnesota (for respondent Commissioner of Human Services)

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Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant challenges a judicial appeal panel's dismissal of his petition for provisional discharge and argues that the Minnesota Commitment and Treatment Act violates his due-process rights. We affirm.

FACTS

Appellant Charles Richard Stone is 56 years old and indeterminately committed as what is now referred to as a Sexual Psychopathic Personality¹ (SPP). Appellant's sexual-offending behavior involved an estimated 150-200 sexual assaults involving between 22 and 35 female victims, ages six through 12.²

Appellant often put himself in positions of authority over his victims by taking roles such as a camp counselor or babysitter. He manipulated and coerced his victims so they would cooperate with him. He then fondled his victims' clothed or unclothed chest and vaginal areas. His sexual misconduct began as a camp counselor between the ages of 14 to 17. The state did not criminally charge him for these offenses. In 1981, appellant committed sexual offenses on two girls, ages six and nine, while in the Marines. He spent ten months incarcerated for these offenses. In 1983, he pleaded guilty to two counts of second-degree criminal sexual misconduct for sexual offenses involving two victims, ages eight and ten. He received a 36-month prison sentence. In the middle of his sentence, the Department of Corrections transferred him to the Transitional Sex Offender Program but then terminated him for failure to progress in therapy.

After his release from prison, appellant was indeterminately committed to the Intensive Treatment Program for Sexual Aggressives (ITSPA) at the Minnesota Security

¹ Appellant was initially committed as a "psychopathic personality," which has since evolved into the current "sexual psychopathic personality" classification. *In re Civil Commitment of Poole*, 921 N.W.2d 62, 71 n.3 (Minn. App. 2018), *review denied* (Minn. Jan. 15, 2019) *citing Call v. Gomez*, 535 N.W.2d 312, 317 n.2 (Minn. 1995) (discussing evolution of "psychopathic personality" to current "sexual psychopathic personality").

² The number of incidents and victims varies depending on the report.

Hospital in St. Peter in 1986. In 1996, he was transferred to the Minnesota Sexual Psychopathic Personality Treatment Center in Moose Lake where he remains currently. The Minnesota Sex Offender Program (MSOP) replaced the ITSPA.

In January 2015, appellant petitioned for transfer to Community Preparation Services (CPS) or for provisional discharge. Respondents, the Commissioner of Human Services (the commissioner) and the Hennepin County Attorney's Office (the county), opposed appellant's petition. A Special Review Board (SRB) heard appellant's petition and recommended denial of appellant's request. Appellant petitioned a Supreme Court Appeal Panel (appeal panel) for reconsideration and rehearing, and the panel remanded the matter back to the SRB, which again recommended denial of appellant's petition. Appellant again petitioned for reconsideration and rehearing, and the appeal panel heard the matter in February 2018. Appellant testified as the sole witness before the appeal panel. He argued that he had completed treatment requirements, he had enjoyed passes into the community many years prior while at the MSOP, the MSOP did not provide a safe environment for him, and that he had changed and become a better person.

The appeal panel's independent medical examiner opined, in her report submitted by appellant, that appellant did not meet the statutory criteria for provisional discharge. She stated, based on actuarial tools, that appellant had a moderate to high risk of reoffending. She opined that appellant is still in his offense cycle based on problematic behaviors that have continued throughout his commitment, including collecting magazines aimed at children and writing letters to minor girls. He continues to be diagnosed with pedophilic disorder. She noted that there is no evidence that appellant's progress has been

hindered by his primary therapist, as he asserts, because records indicate that he has had similar issues with previous therapists.

At the close of appellant's case, the commissioner and the county moved the appeal panel to dismiss appellant's petition pursuant to Minn. R. Civ. P. 41.02(b) and Minn. Stat. § 253D.28, subd. 2(d) and (e) (2018). In May 2018, the panel granted the motion. This appeal follows.³

D E C I S I O N

I. The appeal panel properly dismissed appellant's petition for provisional discharge pursuant to Minn. R. Civ. P. 41.02(b).

Appellant contends that the appeal panel “completely ignored the substantial evidence submitted” that he no longer needs treatment and supervision in his current treatment setting. We disagree.

The Minnesota Commitment and Treatment Act: Sexually Dangerous Persons and Sexual Psychopathic Personalities, Minn. Stat. §§ 253D.01–.36 (2018) (MCTA), governs discharge proceedings of a person committed as an SPP. In the first stage of a proceeding seeking a provisional discharge, the party seeking that discharge has the burden of proof to present to the appeal panel a prima facie case showing that the person is entitled to

³ Although appellant's petition to the appeal panel also included a request for transfer to CPS, appellant's brief does not provide argument as to why the appeal panel's dismissal of appellant's request for transfer was erroneous. We do not decide issues that have not been adequately briefed. *State Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997); *see In re Civil Commitment of Kropp*, 895 N.W.2d 647, 654 (Minn. App. 2017) (applying *Wintz* in a civil-commitment matter), *review denied* (Minn. June 20, 2017). Therefore, this opinion only addresses the appeal panel's dismissal of appellant's request for provisional discharge.

discharge. Minn. Stat. § 253D.28, subd. 2(d). At a first-stage hearing, the appeal panel may not weigh the evidence or make credibility determinations regarding discharge, and must view the evidence in a light most favorable to the committed person. *Id.* A person committed as an SPP may not be provisionally discharged unless they are capable of making an acceptable adjustment to open society. Minn. Stat. § 253D.30, subd. 1(a) (2018). The following factors are to be considered in determining whether a provisional discharge shall be granted:

- (1) whether the committed person's course of treatment and present mental status indicate there is no longer a need for treatment and supervision in the committed person's current treatment setting; and
- (2) whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the committed person to adjust successfully to the community.

Id., subd. 1(b)(1)-(2). When, as here, a judicial appeal panel dismisses a petition for provisional discharge under Minn. R. Civ. P. 41.02(b), this court reviews that decision de novo. *Foster v. Jesson*, 857 N.W.2d 545, 548 (Minn. App. 2014).

In *Foster*, this court affirmed a judicial appeal panel's dismissal of a petition for discharge when the appellant failed to produce any competent evidence during the hearing to support his petition for discharge. *Id.* at 550. And this court has recently held that unsupported conclusory assertions by a committed person are insufficient to present a prima facie case to avoid dismissal of a petition for discharge from the MSOP, especially when those assertions are at odds with the petitioner's own submissions. *Poole*, 921 N.W.2d at 69.

Here, the appeal panel stated that appellant's treatment team does not support provisional discharge, as discussed in the independent medical examiner's report that appellant submitted. It noted that, while appellant believes that he is ready to start reintegration, he continues to focus on his complaints about the treatment program. The appeal panel found that appellant did not make a prima facie showing supporting provisional discharge.

Appellant contends that, because the evidence he presented shows that the commissioner "utterly failed to provide [him] with the basic guarantees of safety and security," he no longer needs treatment and supervision in the MSOP. He provided evidence that a fellow MSOP resident attacked him, the MSOP later required him to attend mediation with this individual, and this led to a breakdown of his relationship with his primary therapist. He also offered an email in which his therapist stated that she wished to make appellant's life uncomfortable. But even taking these assertions as true, they are only evidence of appellant's grievances with the treatment program. They do not support a prima facie showing that he no longer needs treatment and supervision at the MSOP.

Appellant contends that the appeal panel faulted him for not providing an expert opinion that supports provisional discharge. But appellant did not present *any* evidence that supported provisional discharge, other than his own self-serving testimony. For example, he relied on the MSOP Clinician's Guide he submitted, which outlines treatment-phase progression, to claim that, based on the definitions of the progression of treatment, his treatment provider is wrong in assessing his treatment progress. But appellant's own

interpretations of his treatment progress are uncorroborated, which are insufficient to establish a prima facie case for discharge. *Id.*

Appellant claims that the appeal panel must select only the evidence favorable to him. But this is a mischaracterization of the standard. Instead, the appeal panel must consider only the evidence appellant submitted in the light most favorable to him. *Id.* at 66-67. The appeal panel stated in its order that it only considered the evidence that appellant submitted. Moreover, appellant fails to point to any such favorable evidence, other than his own belief that he has completed treatment programs, the fact that he enjoyed passes into the community many years ago without incident, his belief that his pedophilia is in remission, that he has fully disclosed his offending behavior, and that he has completed penile-plethysmograph (PPG) testing, which is a requirement of treatment. He submitted the results of his PPG, which showed significant arousal in response to female pubescent subjects involving coercive behavior. But he did not provide evidence that he has addressed these problematic results. Completion of the PPG by itself does not show that appellant is capable of making an adjustment to open society.

Nor does full disclosure of his past offending behavior when he has not internalized treatment. Appellant submitted one of the panel's independent medical examiner's reports that did not support discharge. It stated that appellant has failed to internalize treatment and showed a continuing diagnosis of pedophilic disorder. Therefore, appellant's claims that he has completed treatment are at odds with his own submissions. *See id.* at 69. Appellant also submitted a psychological evaluation indicating that he has strong intellectual capacities. But this report, like the other evidence appellant submitted, does

not show that appellant has addressed his sexually deviant behaviors or other treatment needs, nor does it otherwise indicate that he can successfully adjust to open society.

Appellant argues that he has been out of his offense cycle for 30 years, and he has become a better person. But he completely ignores his sexually deviant behaviors, consistent with his offense cycle, that have occurred since he has been in the MSOP. He simply denies or makes excuses for these behaviors. The evidence offered by appellant does not support his assertion that he has been out of his offense cycle for 30 years.

Appellant also takes issue with the appeal panel's finding that he submitted an insufficient provisional-discharge plan. The plan did not specify where appellant would work, live, or attend treatment. Appellant also testified that he wished to live in a halfway house if he was provisionally discharged but that he has not been accepted into any. Without these specifics, the plan did not indicate how it would provide a reasonable degree of protection to the public and enable appellant to adjust successfully into the community.

Because the evidence presented, even when viewed in the light most favorable to appellant, does not support a prima facie showing that appellant is capable of successfully adjusting to open society, we affirm the appeal panel's dismissal of appellant's petition for provisional discharge.

II. The MCTA does not violate appellant's due-process rights.

Appellant argues that the MCTA violates his due-process rights because it does not require periodic judicial review in which the state must prove the necessity of confinement by clear and convincing evidence. We are not persuaded.

Appellant did not raise this issue to the SRB or the appeal panel. The state asserts that this argument is forfeited. Appellant contends that this issue cannot be forfeited because the appeal panel and the SRB do not have the power to rule on the constitutionality of statutes. Even if we assume without deciding that this argument is not forfeited, it is without merit.

We review a question of a statute's constitutionality de novo. *SooHoo v. Johnson*, 731 N.W.2d 815, 821 (Minn. 2007). We presume a statute to be constitutional and will not declare one unconstitutional unless absolutely necessary. *Hamilton v. Comm'r of Pub. Safety*, 600 N.W.2d 720, 722 (Minn. 1999). The party challenging the constitutional validity of a statute must demonstrate that it is unconstitutional beyond a reasonable doubt. *Assoc. Builders & Contractors v. Ventura*, 610 N.W.2d 293, 299 (Minn. 2000).

The supreme court has upheld the constitutionality of the predecessor to the SPP statute under which appellant is indeterminately committed. *In re Blodgett*, 510 N.W.2d 910 (Minn. 1994). The supreme court considered a due-process challenge to MCTA in *Call*, 535 N.W.2d at 318-19. It again upheld its constitutionality, holding that a civilly committed person's due-process rights are protected by procedural safeguards including periodic review, the ability to petition for transfer or discharge, and the right to competent medical care and treatment. *Id.* This court is bound by the supreme court's interpretation of a statute. *State v. Rohan*, 834 N.W.2d 223, 227 (Minn. App. 2013), *review denied* (Minn. Oct. 15, 2013); *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018) (holding court of appeals is bound by supreme court precedent). And the Eighth Circuit has rejected both

facial and as-applied challenges to the MCTA in *Karsjens v. Piper*, 845 F. 3d 394 (8th Cir. 2017). Appellant's argument fails.

Affirmed.