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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1521**

In the Matter of the Civil Commitment of:
Rodger Dean Robb, II.

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

Judicial Appeal Panel
File No. AP17-9154

Jennifer L. Thon, Warren J. Maas, Jones Law Office, Mankato, Minnesota (for appellant Rodger Dean Robb, II)

Keith Ellison, Attorney General, R.J. Detrick, Assistant Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Carolyn A. Peterson, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County)

Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Rodger Robb was convicted five times for sexually assaulting boys over the course of 17 years. The district court civilly committed Robb indeterminately as a sexually dangerous person in 2000, and he has refused to participate in treatment since 2001. A judicial appeal panel declined to hold a phase-two hearing on Robb's recent petition for

discharge from commitment. Because Robb presented insufficient evidence to warrant a hearing, we affirm.

FACTS

For 17 years beginning when Rodger Robb was 26 years old, he sexually assaulted 13 boys ranging in age from 10 to 17. Before the end of his prison sentence in 2001, the district court found Robb to be a sexually dangerous person under Minnesota Statutes, section 253B.02, subdivision 18c (1998) (current version Minn. Stat. § 253D.02, subd. 16 (2018)), and civilly committed him indeterminately to the Minnesota Sex Offender Program. Robb has refused to participate in sex-offender treatment since 2001.

In 2017, Robb petitioned for a full discharge. A special review board denied the petition. Robb appealed to a judicial appeal panel for rehearing under Minnesota Statutes, section 253D.28 (2018). Robb called one witness at the hearing, court-appointed examiner Dr. Sara Vaccarella. Dr. Vaccarella testified that Robb continued to pose a danger and to need inpatient treatment. The Commissioner of Human Services moved to dismiss Robb's petition on the ground that Robb failed to present a prima facie case that he is entitled to discharge. The panel granted the motion and denied Robb's petition.

Robb appeals.

DECISION

Robb argues that the panel erred by dismissing his petition under Minnesota Rule of Civil Procedure 41.02(b). We review de novo a dismissal of a petition for discharge under rule 41.02(b). *Larson v. Jesson*, 847 N.W.2d 531, 534 (Minn. App. 2014).

Robb argues that he presented sufficient evidence to entitle him to a phase-two hearing in front of the judicial appeal panel. To justify the hearing, Robb bore the burden to present “a prima facie case with competent evidence” demonstrating that he is entitled to discharge. *See* Minn. Stat. § 253D.28, subd. 2(d) (2018). If he had presented this evidence, the burden would have shifted to the state to show by clear and convincing evidence that discharge should not be granted. *See id.* Robb relies on information in Dr. Vaccarella’s report—specifically, risk-assessment statistics—and contends that this meets his burden of production and entitles him to the requested hearing. This is not so.

Dr. Vaccarella did not merely produce risk-assessment statistics; she also interpreted them in the context of Robb’s circumstances, and she determined that he continues to pose a danger to the public and to need inpatient treatment and supervision. We recently explained that uncorroborated assertions about risk-assessment statistics are insufficient to make a prima facie case for discharge. *In re Poole*, 921 N.W.2d 62, 68–69 (Minn. App. 2018), *review denied* (Minn. Jan. 15, 2019). Robb’s citation to the statistics, without evidence calling into question Dr. Vaccarella’s testimony interpreting them, does not establish a prima facie case justifying the requested hearing. Dr. Vaccarella put the statistics in the context of Robb’s lack of participation in treatment, his lack of interest in ceasing to sexually desire children, and his insistence that the boys he sexually molested had actually consented to his behavior. Given that Robb offered nothing to challenge Dr. Vaccarella’s interpretation of the statistics, he has not presented a case for discharge warranting a phase-two hearing.

Affirmed.