

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1811**

In the Matter of the Civil Commitment of: Bounleng Saengchanh.

**Filed March 18, 2019
Affirmed
Larkin, Judge**

Judicial Appeal Panel
File No. AP17-9126

Michael C. Hager, Minneapolis, Minnesota (for appellant Bounleng Saengchanh)

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

Michael O. Freeman, Hennepin County Attorney, Annsara Lovejoy Elasky, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Smith, Tracy M., Judge.

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

LARKIN, Judge

Appellant, an individual committed as a sexually dangerous person, challenges the judicial appeal panel's dismissal of his petition for provisional discharge, discharge, or

transfer, arguing that his current treatment program at the Minnesota Sex Offender Program is constitutionally inadequate. We affirm.

FACTS

Appellant Bounleng Saengchanh was born in Laos and immigrated to the United States when he was 21 years old. In 1991, Saengchanh was convicted of first-degree criminal sexual conduct against a 12-year-old girl. Between December 1991 and January 1992, Saengchanh was twice accused of sexually assaulting an adult woman, and she allegedly was impregnated as a result of the second assault. Saengchanh was not charged based on those accusations, but he told the police that the child was his and that the woman was being deceitful about the accusations to obtain child support. In 1997, Saengchanh was convicted of three counts of third-degree criminal sexual conduct involving two girls ages 13 and 15. In 2005, Saengchanh was convicted of terroristic threats for choking his girlfriend, threatening to kill her and slice her neck with a knife, and attempting to shove a wooden cooking utensil down her throat.

In 2008, Saengchanh was indeterminately committed to the Minnesota Sex Offender Program (MSOP) as a sexually dangerous person (SDP). In 2016, Saengchanh progressed to Phase II of MSOP. In 2017, Saengchanh petitioned the special review board for a provisional discharge, discharge, or transfer. The special review board recommended that all three forms of relief be denied.

Saengchanh petitioned for rehearing and reconsideration by the judicial appeal panel, which held an evidentiary hearing on Saengchanh's petition. Saengchanh testified at the hearing, and he called the following witnesses: Eldridge Kretsinger, an individual

who met Saengchanh in a ministry program while Saengchanh was incarcerated at MCF-Stillwater, Soukchanpheng Ngonethong, an individual who works as an interpreter and was hired to provide interpreting services for Saengchanh at MSOP in 2015, and Pastor Phonh Sinbondit. Saengchanh offered one exhibit, but it was not received because the judicial appeal panel found it “cumulative to the testimony.” The judicial appeal panel received 19 exhibits from respondent Minnesota Commissioner of Human Services, pursuant to a stipulation of the parties.

After the presentation of Saengchanh’s witness testimony, the commissioner and respondent Hennepin County moved to dismiss Saengchanh’s petition under Minn. R. Civ. P. 41.02(b). The judicial appeal panel granted the motion to dismiss, applying the statutory standards that govern discharge and transfer determinations and concluding that Saengchanh failed to present a prima facie case that he is entitled to a provisional or full discharge and that Saengchanh failed to demonstrate by a preponderance of the evidence that a transfer to a less-restrictive facility is appropriate. Saengchanh appeals.

D E C I S I O N

Saengchanh challenges the judicial appeal panel’s denial of his petition for relief contending that his “current treatment program at MSOP is constitutionally inadequate and reduction of custody should be granted to provide tailored adequate treatment.” Specifically, Saengchanh questions “whether the conventional treatment offered [him], as a Lao speaker with a verbal IQ of 57, is constitutionally adequate”¹ Saengchanh

¹ Saengchanh has limited English proficiency. Saengchanh’s interpreter, Ngonethong, testified that Saengchanh speaks Lowland Lao and that he has had difficulty understanding

argues that he needs “specialized programming so far unavailable in his current treatment setting and he seeks transfer or provisional discharge in the hope that programming that fits his unique needs could thereby be made available.” Saengchanh asserts that fact finding regarding his “educability, in the current placement, would be of constitutional significance in rebuttal to the assumption of professional judgment” regarding “an adequate treatment milieu.” Saengchanh concludes, “The decision to grant dismissal and to deny [his] petition should be reversed to permit further proceedings below consistent with standards for providing adequate treatment for an amenable patient.” In sum, Saengchanh seeks a discharge or transfer to remedy his allegedly inadequate treatment program at MSOP.

The commissioner argues that Saengchanh’s “brief raises a constitutional adequacy of treatment issue that has no bearing on his petition and is not properly before this Court on appeal.” Whether a particular tribunal has authority to order a particular remedy presents a question of law that we review de novo. *See, e.g., State v. Johnson*, 851 N.W.2d 60, 65 (Minn. 2014) (“Whether Minnesota law permits courts to order joint and several liability for restitution is a question of law, which [appellate courts] review de novo.”).

some interpreters’ accents or language because Laos has 53 different ethnic groups. However, Kretsinger testified that Saengchanh’s English “has improved . . . to a fairly good extent. . . . [n]ow I pretty much understand most of what he says.”

Testing indicates that Saengchanh has a verbal-IQ score of 57, which falls into the mild-impairment range of functioning, and a performance-IQ score of 78, which falls into the borderline range of intellectual functioning. “According to treatment records, the treatment team is unsure if these results demonstrate true cognitive impairment, a language barrier, or both.”

Saengchanh’s petition for discharge or transfer was a petition for reduction in custody under section 253D.27 of the Minnesota Commitment and Treatment Act: Sexually Dangerous Persons and Sexual Psychopathic Personalities (the MCTA), Minn. Stat. §§ 253D.01-.36 (2018). The MCTA authorizes three forms of relief on a petition for reduction of custody: provisional discharge, discharge, and transfer. *See* Minn. Stat. § 253D.27, subd. 1(b) (“For the purposes of this section, ‘reduction in custody’ means transfer out of a secure treatment facility, a provisional discharge, or a discharge from commitment.”); *see also In re Civil Commitment of Lonergan*, 811 N.W.2d 635, 641-42 (Minn. 2012) (“The Commitment Act only provides relief to a patient indeterminately committed as an SDP or SPP through a transfer or a discharge.”).

The MCTA provides standards that must be followed when granting a discharge or transfer. A person who is committed as an SDP “shall not be provisionally discharged unless the committed person is capable of making an acceptable adjustment to open society.” Minn. Stat. § 253D.30, subd. 1(a). In determining whether to grant a provisional discharge, the judicial appeal panel must consider two statutory criteria:

- (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).

A person who is committed as an SDP

shall not be discharged unless it appears to the satisfaction of the judicial appeal panel, after a hearing and recommendation by a majority of the special review board, that the committed person is capable of making an acceptable adjustment to open society, is no longer dangerous to the public, and is no longer in need of treatment and supervision.

In determining whether a discharge shall be recommended, the special review board and judicial appeal panel shall consider whether specific conditions exist to provide a reasonable degree of protection to the public and to assist the committed person in adjusting to the community. If the desired conditions do not exist, the discharge shall not be granted.

Minn. Stat. § 253D.31.²

As to a transfer request, “A person who is committed as [an SDP] . . . shall not be transferred out of a secure treatment facility unless the transfer is appropriate. Transfer may be to other treatment programs under the commissioner’s control.” Minn. Stat. § 253D.29, subd. 1(a). The judicial appeal panel must consider the following factors when evaluating a request for transfer:

(1) the person’s clinical progress and present treatment needs;

² Saengchanh bore the burden of going forward with sufficient evidence to support his request for discharge or provisional discharge. See Minn. Stat. § 253D.28, subd. 2(d) (“The petitioning party seeking discharge or provisional discharge bears 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. If the petitioning party has met this burden, the party opposing discharge or provisional discharge bears the burden of proof by clear and convincing evidence that the discharge or provisional discharge should be denied.”). To meet his burden of production, Saengchanh had to present competent evidence that, if believed by the panel, would allow it to grant the requested relief. See *Foster v. Jesson*, 857 N.W.2d 545, 549 (Minn. App. 2014). The judicial appeal panel was not allowed to weigh the evidence or make credibility determinations at the initial stage of the proceedings and was required to view the evidence produced in a light most favorable to Saengchanh. See *Coker v. Jesson*, 831 N.W.2d 483, 490-91 (Minn. 2013).

- (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).³

The MCTA does not authorize a transfer based solely on treatment needs; instead, the committed person's "present treatment needs" is only one factor of five that must be assessed. *Id.* Nor does the MCTA authorize a discharge or transfer as a means of obtaining alternative treatment when the statutory standards for a discharge or transfer are not otherwise satisfied. Yet, Saengchanh does not challenge the judicial appeal panel's findings and conclusions that the statutory standards for discharge and transfer are not satisfied. Moreover, Saengchanh does not claim that a discharge or transfer will result in treatment that he deems appropriate.⁴ Instead, he seeks transfer or provisional discharge in the *hope* that programming that fits his unique needs could be made available.

Because the MCTA does not authorize the relief Saengchanh seeks in his petition for reduction of custody—a discharge or transfer to remedy purportedly inadequate

³ Minn. Stat. § 253D.29, subd. 1, governs transfers to nonsecure treatment programs under the commissioner's control. Saengchanh bore the burden of proof on his transfer request and had to establish by a preponderance of the evidence that a transfer is appropriate. *See* Minn. Stat. § 253D.28, subd. 2(e) ("A party seeking transfer under section 253D.29 must establish by a preponderance of the evidence that the transfer is appropriate."). The judicial appeal panel is allowed to make credibility determinations and weigh evidence on a motion to dismiss a transfer request. *Foster*, 857 N.W.2d at 548.

⁴ Saengchanh did not submit a provisional discharge plan to the special review board or the judicial appeal panel. Minn. Stat. § 253D.30, subd. 1(b)(2) (requiring consideration of a provisional discharge plan). Nor has he identified a treatment provider that will provide more adequate treatment.

treatment—we do not reverse and remand for further proceedings and findings regarding Saengchanh’s “educability” or the adequacy of his treatment at MSOP. And because Saengchanh does not challenge the judicial appeal panel’s findings and conclusions that he failed to meet his burdens of production and persuasion under the statutory standards that governed its decision, we affirm without addressing that decision, except to note that the judicial appeal panel cited the correct statutory standards and we do not discern obvious error.

Affirmed.