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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0377**

In the Matter of the Civil Commitment of: Michael Stringer

**Filed July 22, 2019
Affirmed
Connolly, Judge**

Commitment Appeal Panel
File No. AP18-9008

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

Keith Ellison, Attorney General, Drew Bredeson, Assistant Attorney General, St. Paul, Minnesota (for respondent Commissioner of Human Services)

Michael O. Freeman, Hennepin County Attorney, Jennifer Inz, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and
Smith, John, Judge.*

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant, an individual indeterminately committed in the Minnesota Sex Offenders Program (MSOP), challenges the commitment appeal panel's decision to deny his request

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

to transfer to community preparation services (CPS), arguing that his current treatment in MSOP is no longer appropriate. Because the commitment appeal panel properly addressed appellant's petition in relation to the statutory factors outlined in Minn. Stat. § 253D.29, subd. 1(b) (2018), and there is sufficient evidence to support the panel's findings and conclusions, we affirm.

FACTS

Appellant Michael Stringer is indeterminately committed to the MSOP as a sexually Dangerous Person (SDP). In April 2017, appellant petitioned the Special Review Board (SRB) for a transfer to CPS, provisional discharge, or discharge from civil commitment. Respondent Commissioner of Human Services opposed the petition and the SRB denied appellant's requests after hearings were held. Appellant subsequently filed a petition for a rehearing and proceeded only on his request for transfer to CPS. The rehearing was held before a commitment appeal panel, which again denied appellant's request for transfer. Appellant filed a notice of appeal and argues that his current treatment in MSOP is no longer appropriate and that the panel did not properly weigh the evidence.

D E C I S I O N

When this court reviews the denial of a transfer petition, we evaluate the panel's decision "for clear error, examining the record to determine whether the evidence as a whole sustains the appeal panels' findings and not weighing the evidence as if trying the matter de novo." *Larson v. Jesson*, 847 N.W.2d 531, 534 (Minn. App. 2014) (quotations omitted). "If the evidence as a whole sustains the panel's findings, it is immaterial that the

record might also provide a reasonable basis for inferences and findings to the contrary.” *In re Civil Commitment of Kropp*, 895 N.W.2d 647, 650 (Minn. App. 2017).

A person civilly committed as a SDP “shall not be transferred out of a secure treatment facility unless the transfer is appropriate.” Minn. Stat. § 253D.29, subd. 1(a) (2018). The statute sets forth the factors that determine whether a transfer is appropriate. *See* Minn. Stat. § 253D.29, subd. 1(b) (describing the factors); *Piotter v. Steffen*, 490 N.W.2d 915, 919 (Minn. App. 1992) (In evaluating whether a petitioner has demonstrated the appropriateness of transfer by a preponderance of the evidence, “[t]he panel must address the statutory factors.”). In this case, the commitment appeal panel weighed the evidence presented with the statutory factors and determined that transfer was not appropriate.

Appellant does not argue that there was insufficient evidence to support the commitment appeal panel’s findings and conclusions. Instead, he argues that the commitment appeal panel placed too much weight on the evidence and recommendations provided by MSOP’s staff, who opposed the transfer. He argues that his proffered evidence, a report from Dr. George Komaridis, supported transfer and that “[t]he statutory factors for transfer when viewed by a detached independent observer, . . . appear to be met.” But regarding the conflicting evidence presented to the panel, this court “do[es] not reweigh the evidence,” and it is “immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *In re Civil Commitment of Fugelseth*, 907 N.W.2d 248, 253 (Minn. App. 2018).

Appellant also challenges the impropriety of “static factors” utilized in the MSOP Sexual Violence Risk Assessment (SVRA), which do not take into account appellant’s progress in treatment. He argues that the static factors that take into consideration his criminal-history score will always result in him being labeled a high-risk offender, and this high-risk status prevents the commitment appeal panel from genuinely reviewing whether his treatment progression warrants a reduction in custody. But this argument fails to take into consideration the commitment appeal panel’s expressed reasons for denying transfer. Specifically, the commitment appeal panel indicated that appellant needed to “make progress in areas of personal accountability, cooperating with his treatment team, and gaining a deeper insight into his sexual offense pattern,” and that appellant must “continue to progress in transparency around sexual thoughts, [and] fantasies.” The appeal panel stated that appellant has yet to “fully address or understand his sexual offense cycle and how it surfaces today. He has not yet demonstrated the motivation and self-monitoring skills necessary for a reduction in supervision.”

It is significant that the rationales underlying the decision to deny appellant’s transfer petition were not predicated on his high-risk status, which stemmed in part from the referenced static factors. Moreover, appellant provides no authority for the proposition that a SDP’s transfer petition is contingent on risk-labels, instead of the statutory factors. Consequently, appellant’s challenge to the static risk factors utilized in the SVRA does not warrant a reversal.

Lastly, appellant challenges the denial of his petition on constitutional grounds. He argues that his commitment violates due process because he has been participating in

treatment for over 14 years without a reduction in custody. The commissioner argues that appellant's constitutional argument is not properly before this court because appellant narrowed the scope of issues "to proceed just on transfer" and the commitment appeal panel is barred from considering "petitions for relief other than those considered by the special review board from which the appeal is taken," and "may not grant a transfer or provisional discharge on terms or conditions that were not presented to the special review board." Minn. Stat. § 253D.28, subd. 3 (2018). We agree with respondent that appellant's due process argument, which was not presented to the SRB and not argued to the commitment appeal panel, is not properly before this court. However, even if we were to consider his argument, the Minnesota Supreme Court has held that the period review process complies with due process. *See In re Blodgett*, 510 N.W.2d 910 (Minn. 1994) (upholding the constitutionality of the predecessor to the SDP statute under which appellant is indeterminately committed).

Affirmed.