

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0945**

In the Matter of the Civil Commitment of:
Carl Joseph Vachon aka Carl William Huntress, Jr.

**Filed January 4, 2021
Affirmed
Johnson, Judge**

Commitment Appeal Panel
File No. AP19-9156

Carl Joseph Vachon, St. Peter, Minnesota (*pro se* appellant)

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

Charles Hanson, Brown County Attorney, Jill M. Jensen, Deputy Brown County Attorney, New Ulm, Minnesota (for respondent Brown County)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Carl Joseph Vachon (also known as Carl William Huntress Jr.) is civilly committed as a sexually dangerous person and a sexual psychopathic personality. He petitioned for a transfer. The special review board denied his petition. On rehearing and reconsideration, the commitment appeal panel granted the commissioner of human services' motion to dismiss the petition. We conclude that the commitment appeal panel did not clearly err by

finding that Vachon did not prove by a preponderance of the evidence that a transfer is appropriate. Therefore, we affirm.

FACTS

Vachon is a 67-year old man who is civilly committed as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP). Vachon has a history of sexual misconduct that includes multiple criminal convictions and multiple terms of imprisonment. His most recent conviction was in 1997, when he pleaded guilty in Brown County to second-degree criminal sexual conduct and admitted to sexually assaulting a six-year-old girl. In 2002, he was indeterminately committed by the Brown County District Court. Since being committed, Vachon has received treatment in the Minnesota Sex Offender Program (MSOP) at Moose Lake.

In October 2018, Vachon petitioned the special review board for a transfer to MSOP's Community Preparation Services program (CPS). The special review board reviewed, among other things, a treatment report prepared by Vachon's treatment team. The treatment report indicated that Vachon had "made significant treatment progress during the last year" but that "questions remain regarding whether sexual arousal to prepubescent minors remains as a treatment concern" and "the degree to which arousal to coercion and violence plays a role in his life." The treatment report concluded that Vachon's petition for transfer is "premature" and recommended that Vachon remain in his current treatment setting at MSOP.

The special review board also reviewed a sexual-violence risk assessment prepared by a forensic evaluator, Elisa Carr. The report noted Vachon's progress in treatment but

stated that his progress was in the “early stages.” Carr’s report also stated that Vachon still needed to improve by sharing more information with his treatment providers, being more transparent, developing better arousal-management techniques, implementing such techniques, and developing better self-management skills. Carr’s report stated that Vachon’s needs “are best met within the secure perimeter, as the environment will afford him the therapeutic support, safety, and structure required as he continues to integrate treatment gains into his daily life” and that a change in his treatment team with a transfer to CPS “could disrupt Mr. Vachon’s treatment progress.”

The special review panel recommended that Vachon’s petition be denied on the ground that transfer is premature. Vachon petitioned for rehearing and reconsideration by the commitment appeal panel. The commitment appeal panel conducted an evidentiary hearing in April 2020. Vachon called three witnesses: Kelly Meyer, an MSOP employee who leads the arousal-management program; Amanda Powers, a clinical forensic psychologist who was the court-appointed examiner; and himself.

Meyer testified that she has known Vachon for five years and that he had completed two-thirds of MSOP’s arousal-management program, which is designed to address patients’ sexual deviance and promote their interest in healthy sexuality. Meyer testified that Vachon was “completing everything required of him” in the program and that he has been improving in his transparency and openness. But Meyer noted that Vachon still had work to do regarding his “ongoing minimizations and denials.”

Powers testified that Vachon is making progress in the arousal-management program and that a transfer would be disruptive. Powers testified that Vachon still requires

“intensive treatment intervention” and that he continues to be at a high risk to reoffend. Powers testified that Vachon has not worked through his sexual-victimization issues and that he needs to complete his treatment in MSOP at Moose Lake before he will be ready for CPS.

Vachon testified about his upbringing and his difficult childhood. He testified that he has improved with respect to transparency during his treatment. He testified that he previously avoided his feelings but now understands that he must talk about his feelings to overcome his shame, embarrassment, and feelings of inadequacy. Vachon testified that he understands that he will need arousal-management therapy for the rest of his life.

After Vachon rested his case, the commissioner moved to dismiss the transfer petition. The commitment appeal panel took the matter under advisement. In May 2020, the commitment appeal panel issued a written order in which it granted the commissioner’s motion to dismiss. Vachon appeals.

DECISION

Vachon argues that the commitment appeal panel erred by granting the commissioner’s motion to dismiss.

A person who is committed as an SDP may petition the special review board for a reduction in custody. Minn. Stat. § 253D.27, subd. 2 (2018). The term “reduction in custody” encompasses a transfer to CPS. *Id.*, subd. 1(b). If a committed person files a petition for a reduction in custody, “[t]he special review board shall hold a hearing” and, thereafter, “shall issue a report with written findings of fact and shall recommend denial or approval of the petition to the judicial appeal panel.” *Id.*, subds. 3(a), 4. If the special

review board recommends denial of the petition, the committed person “may petition the judicial appeal panel . . . for a rehearing and reconsideration of” the special review board’s recommendation. Minn. Stat. § 253D.28, subd. 1(a) (2018). The judicial appeal panel generally must hold a hearing within 180 days. *Id.*, subd. 1(b).

A person who is committed as an SDP may be transferred to CPS only if “the transfer is appropriate.” Minn. Stat. § 253D.29, subd. 1(a) (2018). In determining whether a transfer is appropriate, the judicial appeal panel must consider five factors:

- (1) the person’s clinical progress and present treatment needs;
 - (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). If a committed person requests a transfer to CPS, he bears both “the burdens of production *and* persuasion . . . at the hearing before the judicial appeal panel.” *Foster v. Jesson*, 857 N.W.2d 545, 548 (Minn. App. 2014); *see also* Minn. Stat. § 253D.28, subd. 2(e) (2018).

If the commissioner wishes to challenge a petitioner’s entitlement to relief after the petitioner rests his case, the commissioner may move to dismiss the petition pursuant to rule 41.02(b) of the rules of civil procedure. *Coker v. Jesson*, 831 N.W.2d 483, 489-91 (Minn. 2013); *Foster*, 857 N.W. at 548. That rule provides, in relevant part:

After the plaintiff has completed the presentation of evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law, the plaintiff has shown no right to relief.

Minn. R. Civ. P. 41.02(b). Because the committed person bears the burden of persuasion, the commitment appeal panel is not required to view his evidence in a light most favorable to him when considering a motion to dismiss pursuant to rule 41. *Foster*, 857 N.W.2d at 548. Accordingly, this court applies a clear-error standard of review to a commitment appeal panel's grant of a rule 41.02(b) motion to dismiss a request for a transfer. *Id.* In applying that standard, we "examin[e] the record to determine whether the evidence as a whole sustains the appeal panel[']s findings." *Larson v. Jesson*, 847 N.W.2d 531, 534 (Minn. App. 2014) (quotations omitted).

In this case, the commitment appeal panel addressed each of the five statutory factors. The commitment appeal panel reasoned that the first factor supports transfer because Vachon "has been making significant progress in treatment" and his "overall engagement and clinical progress in treatment has experienced marked improvement." The commitment appeal reasoned that the second factor supports transfer because Vachon "does not need the current level of security to accomplish continuing treatment." But the commitment appeal panel reasoned that the third factor does not support transfer because Vachon "still requires the current level of institutionalization and structure." The commitment appeal panel reasoned that the fourth factor does not support transfer because "CPS is not the best facility to meet his current treatment needs" and Vachon "still requires the current level of institutionalization and structure." The commitment appeal panel

reasoned that the fifth factor does not support transfer because Vachon's "unmitigated risk to reoffend" means that "transfer cannot be accomplished . . . with a reasonable degree of safety for the public."

The commitment appeal panel concluded that, overall, Vachon "failed to demonstrate by a preponderance of the evidence that transfer to a less restrictive facility is appropriate at this time." The commitment appeal panel commented that Vachon "has lowered his treatment interfering factors and developed positive coping skills, but now . . . has some hard work to do in Phase II of the sex offender treatment at MSOP." Finally, the commitment appeal panel expressed its hope that Vachon "will not become discouraged" but, rather, "will keep on the positive treatment trajectory that Dr. Carr noted."

Vachon's argument has three parts. First, he contends that the record does not sustain the findings of the commitment appeal panel with respect to the five statutory factors. Because the commitment appeal panel reasoned that the first and second factors support transfer, we focus on the remaining factors. Contrary to Vachon's contentions, there is evidence in the record that supports the panel's reasoning with respect to the third and fourth factors. Powers testified that Vachon would receive more appropriate treatment and supervision in his current treatment setting and that he continues to need such treatment. Specifically, Powers testified that Vachon's current stage of progress is inconsistent with being ready for CPS, and she testified further that Vachon needs to be in a structured environment when going through the arousal-management program. Furthermore, there is evidence in the record that supports the panel's reasoning with respect to the fifth factor. The sexual-violence risk assessment stated that Vachon would have a

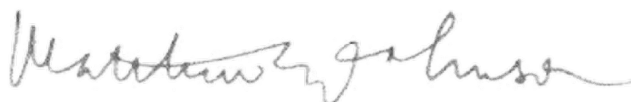
higher risk for sexually re-offending than the average offender, which supports a finding that a transfer could not be accomplished with a reasonable degree of safety for the public.

Second, Vachon contends that the commitment appeal panel placed too much weight on static risk factors, which he is unable to change through therapy, when it stated that he has an “unmitigated risk to reoffend.” The panel’s order states that it received Carr’s risk assessment as an exhibit, but the order does not discuss the assessment in detail, let alone refer to static factors. The panel’s statement concerning “unmitigated” risk could just as well refer to dynamic factors. There is no indication in the panel’s order that it clearly erred by placing too much emphasis on the evidence of Vachon’s static risk factors.

Third, Vachon contends that the evidence as a whole does not support the commitment appeal panel’s order and that he satisfied his burden of persuasion on the ultimate issue. Vachon’s multi-faceted challenge to the panel’s findings essentially asks this court to reweigh the evidence and second-guess the factfinder’s assessment of the evidence, which is inconsistent with the applicable clear-error standard of review. Also, Vachon was the only witness at the hearing who testified that transfer is appropriate. Powers opined that transfer is not appropriate at this time and provided detailed testimony that is consistent with her opinion. In light of all of the evidence, the commitment appeal panel did not clearly err by finding that Vachon did not satisfy his burden of persuasion.

In sum, the commitment appeal panel did not err by granting the commissioner’s motion to dismiss Vachon’s petition for transfer.

Affirmed.

A handwritten signature in cursive script, appearing to read "Matthew Johnson", written in dark ink.