

*This opinion is nonprecedential except as provided by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
A21-0128**

In the Matter of the Civil Commitment of: Jeffrey Thomas Pendzimas.

**Filed August 9, 2021
Affirmed
Johnson, Judge**

Isanti County District Court
File No. 30-PR-19-99

Craig E. Cascarano, Minneapolis, Minnesota (for appellant Jeffrey Thomas Pendzimas)

Keith Ellison, Attorney General, Angela Helseth Kiese, Assistant Attorney General, St. Paul, Minnesota; and

Jeffrey R. Edblad, Isanti County Attorney, Cambridge, Minnesota (for respondent Isanti County Family Services)

Considered and decided by Johnson, Presiding Judge; Worke, Judge; and Gaitas, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Jeffrey Thomas Pendzimas challenges his civil commitment as a sexually dangerous person. We conclude that the district court did not err by finding that Pendzimas engaged in a course of harmful sexual conduct or by finding that he is highly likely to engage in harmful sexual conduct in the future. Therefore, we affirm.

FACTS

In December 2019, Isanti County petitioned the district court for the civil commitment of Pendzimas, who then was a 64-year-old man, as a sexually dangerous person (SDP). The petition is based on multiple incidents of sexual misconduct occurring over several decades. The matter was tried on three days in August 2020. The district court received 44 exhibits into evidence and received the testimony of two court-appointed psychological examiners and Pendzimas.

The county presented voluminous evidence of Pendzimas's history of deviant sexual conduct. Some of the county's evidence consisted of Pendzimas's criminal history, which we summarize below. When Pendzimas was 21 or 22 years old, he was convicted of one count of misdemeanor indecent conduct for exposing himself at a retail store. When he was 26 or 27 years old, he was convicted of one count of misdemeanor indecent exposure for exposing himself to a teenage girl at a bus stop. When he was 29 or 30 years old, he was convicted of exposing himself to teenage girls at a bus stop. When he was 38 years old, he was convicted in Anoka County of one count of disturbing the peace based on his admission that he had "window peeped" on an adult woman. When he was 39 or 40 years old, he pleaded guilty in Isanti County to one count of gross-misdemeanor fifth-degree criminal sexual conduct based on his admission that he touched a 14-year-old girl's breasts while she slept and one count of gross-misdemeanor fifth-degree criminal sexual conduct based on his admission that he touched a 12-year-old girl's breasts while riding behind her on a jet ski. When he was 42 or 43 years old, he was convicted of indecent exposure for exposing himself to a minor. Later that year, he was convicted in Anoka

County of one count of gross-misdemeanor indecent exposure based on his admission that he exposed himself in a toy store. When he was 49 years old, he was convicted in Anoka County of three counts of felony indecent exposure based on his admission that he exposed himself to five young girls on separate occasions. When he was 56 years old, he was convicted in Sherburne County of one count of felony indecent exposure and one count of gross-misdemeanor indecent exposure based on his admission that he exposed himself to a woman in a parking lot and separately to two juvenile females. Later that year, he was convicted in Kanabec County of one count of gross-misdemeanor indecent exposure based on his admission that he exposed himself to a woman in a parking lot. When he was 59 years old, he was convicted in Anoka County of one count of gross-misdemeanor fifth-degree criminal sexual conduct based on his admission that he took a photograph under a woman's skirt at a retail store. He was also convicted of one count of felony interference with the privacy of a minor based on his admission that he made a video-recording under the skirt of a 12-year-old girl at a retail store. And when he was 62 years old, he was convicted in Ramsey County of one count of felony fifth-degree criminal sexual conduct based on his admission that he exposed himself at the Minnesota State Fair and touched a woman's buttocks. The district court imposed a sentence of 42 months of imprisonment. Pendzimas was imprisoned for that offense when Isanti County petitioned for his civil commitment.

The county also presented evidence of numerous incidents of sexual misconduct that did not result in criminal prosecution, most of which Pendzimas previously disclosed in his treatment. For example, when Pendzimas was 15 years old, he sexually abused his

sister, who was 11 or 12 years old. When he was between 16 and 18 years old, he sexually assaulted a 16-year-old girl, sexually assaulted a 15-year-old girl, raped a woman in her 20s, and raped a woman in her 30s after breaking into her apartment and hitting her on the head with a hammer. When he was 19 years old, he exposed himself to young girls and teenage girls while riding his motorcycle. When he was 20 years old, he peeped on a 15-year-old girl. When he was in his 30s, he had sexual contact with a teenage girl at his home. When he was 35 years old, he repeatedly peeped on two of his teenage nieces. He also sexually abused an 11-year-old girl. When he was 47 years old, he watched and filmed his son's girlfriend for a period of six months when she showered. During that same period, he window peeped on an 18-year-old woman and other females in a group home. These are examples, not an exhaustive list of incidents.

Both of the court-appointed psychological examiners, Dr. Paul Reitman and Dr. Tyler Dority, submitted a written report and testified at trial. Both opined that Pendzimas's history and condition satisfies the commitment criteria in the SDP statute.

In December 2020, the district court issued a 103-page order in which it granted the county's petition. The district court ordered that Pendzimas be committed indefinitely to the custody of the commissioner of human services. Pendzimas appeals.

DECISION

Pendzimas argues that the district court erred by concluding that the evidence satisfies the criteria for commitment as a sexually dangerous person.

A person is a sexually dangerous person if he:

- (1) has engaged in a course of harmful sexual conduct as defined in [section 253D.02,] subdivision 8;
- (2) has manifested a sexual, personality, or other mental disorder or dysfunction; and
- (3) as a result, is likely to engage in acts of harmful sexual conduct as defined in subdivision 8.

Minn. Stat. § 253D.02, subd. 16(a) (2020). The third requirement is satisfied if a person is “highly likely” to engage in acts of harmful sexual conduct in the future. *In re Civil Commitment of Ince*, 847 N.W.2d 13, 20-22 (Minn. 2014).

A party petitioning for the civil commitment of a person under the SDP statute must prove by clear and convincing evidence that the person is a sexually dangerous person. Minn. Stat. § 253D.07, subd. 3 (2020); *Ince*, 847 N.W.2d at 22. If the petitioner satisfies that evidentiary burden, the district court “shall commit the person to a secure treatment facility unless the person establishes by clear and convincing evidence that a less restrictive treatment program is available, is willing to accept the respondent under commitment, and is consistent with the person’s treatment needs and the requirements of public safety.” Minn. Stat. § 253D.07, subd. 3. On appeal, this court applies a clear-error standard of review to the district court’s findings of fact, Minn. R. Civ. P. 52.01; *In re Joelson*, 385 N.W.2d 810, 811 (Minn. 1986); *In re Civil Commitment of Navratil*, 799 N.W.2d 643, 647 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011), and a *de novo* standard of review to the question whether the facts found by the district court satisfy the statutory criteria for commitment, *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994) (*Linehan I*).

Pendzimas challenges the district court's determination that the county satisfied its burden of proof with respect to the first and third statutory requirements.

A.

Pendzimas first argues that the district court erred by finding that he has engaged in a course of harmful sexual conduct.

The term "harmful sexual conduct" is defined by statute to mean "sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another." Minn. Stat. § 253D.02, subd. 8(a). The word "course" means "a systematic or orderly succession" or "a sequence." *In re Civil Commitment of Stone*, 711 N.W.2d 831, 837 (Minn. App. 2006) (quotations omitted), *review denied* (Minn. June 20, 2006). To determine whether an offender has engaged in a course of harmful sexual conduct, a court should consider "both conduct for which the offender was convicted and conduct that did not result in a conviction." *Id.*

In this case, the district court found that Pendzimas had engaged in a course of harmful sexual conduct over a period of 48 years. The district court also found that, based on Pendzimas's testimony, the court-appointed examiners' testimony, and other evidence in the record, Pendzimas's conduct "likely cause[d] substantial physical or emotional harm." The district court stated that the county had proved these facts by clear and convincing evidence.

We discern two primary contentions in Pendzimas's challenge to the district court's finding that he engaged in a course of harmful sexual conduct. First, Pendzimas contends that his "contact offenses" do not constitute a "course" of harmful sexual conduct on the

ground that they are relatively few in number and occurred only in his teenage years, in the mid-1990s, and in 2017. We question whether it is necessary or proper to analyze contact offenses and non-contact offenses separately. In *Stone*, this court concluded that a “course” of harmful sexual conduct may be established even if various incidents of harmful sexual conduct are not of “precisely the same type,” 711 N.W.2d at 839, and that the incidents constituting a course of harmful sexual conduct “need not be recent,” *id.* at 837, and need not be uninterrupted, *id.* at 838. In light of *Stone*, Pendzimas’s so-called contact offenses, by themselves, may constitute a course of harmful sexual conduct. Furthermore, Pendzimas’s contact offenses may be considered alongside his non-contact offenses to determine whether he has engaged in a course of harmful sexual conduct.

Second, Pendzimas contends that the evidence is insufficient to prove that his conduct created a substantial likelihood of serious physical or emotional harm to his victims. He asserts that the court-appointed examiners’ evidence does not satisfy the county’s burden because they did not testify that his past misconduct, which often consisted of voyeurism or exposure, created a substantial likelihood of serious physical or emotional harm.

Contrary to Pendzimas’s argument, the court-appointed examiners testified fairly clearly that his offenses likely caused serious physical or emotional harm. They testified that Pendzimas engaged in ten contact offenses. They testified that Pendzimas’s rapes of strangers likely caused harms such as post-traumatic stress disorder and depression. They also testified that Pendzimas’s other contact offenses and his non-contact criminal offenses could have been traumatic for his victims and likely caused varying degrees of

psychological harm. This evidence supports the district court's finding that Pendzimas's conduct created a substantial likelihood of serious physical or emotional harm, regardless of whether he had physical contact with his victims.

In addition, Pendzimas himself testified, with candor, that he likely caused serious physical or emotional harm to others. For example, when questioned by the county's attorney, Pendzimas testified that his first rape likely harmed his victim by making her paranoid, causing her to have nightmares of the offense, interfering with her relationships with men, and leaving her with emotional trauma. He also testified that his second rape victim likely was harmed emotionally in the same manner as his first victim. He testified that his sexual abuse of his son's friend caused her to have paranoia, to distrust men, to lose her friendship with his son, and to have problems in school. Again, these are examples; Pendzimas also testified about the impact of his conduct on other victims.

Thus, the district court did not err by finding that Pendzimas engaged in a course of harmful sexual conduct.

B.

Pendzimas also argues that the district court erred by finding that he is highly likely to engage in harmful sexual conduct in the future if he is not committed.

To determine whether a person is highly likely to engage in harmful sexual conduct in the future, a district court must engage in a "multi-factor analysis." *Ince*, 847 N.W.2d at 23-24. The multi-factor analysis considers the following six factors, which are commonly known as the *Linehan* factors:

(a) the person's relevant demographic characteristics (*e.g.*, age, education, etc.); (b) the person's history of violent behavior (paying particular attention to recency, severity, and frequency of violent acts); (c) the base rate statistics for violent behavior among individuals of this person's background (*e.g.*, data showing the rate at which rapists recidivate, the correlation between age and criminal sexual activity, etc.); (d) the sources of stress in the environment (cognitive and affective factors which indicate that the person may be predisposed to cope with stress in a violent or nonviolent manner); (e) the similarity of the present or future context to those contexts in which the person has used violence in the past; and (f) the person's record with respect to sex therapy programs.

Id. at 22 (quoting *Linehan I*, 518 N.W.2d at 614). The multi-factor analysis also may include any other "relevant and reliable evidence," including evidence derived from actuarial risk-assessment tools and structured clinical-judgment tools. *Id.* at 23-24. We apply a clear-error standard of review to the district court's findings of fact related to the *Linehan* factors. *Id.* at 22.

In this case, the district court analyzed each of the six *Linehan* factors and made findings with respect to each factor. The district court credited the court-appointed examiners' opinions that Pendzimas was highly likely to engage in acts of harmful sexual conduct in the future. The district court found that Pendzimas's most recent criminal offense in 2017 was an escalation of his previous non-contact offenses and increased the likelihood that he would engage in similar conduct in the future. The district court considered the actuarial assessments and the testimony related to dynamic risk factors. The district court concluded its analysis by finding that Pendzimas is highly likely to engage in future acts of harmful sexual conduct.

Pendzimas argues that the evidence is insufficient to prove that he is highly likely to engage in acts of harmful sexual conduct in the future according to the clear-and-convincing standard. He challenges the evidence supporting the district court's findings on each of the six *Linehan* factors.

With respect to the first *Linehan* factor, Pendzimas contends that, at the time of trial, he was a 65-year-old man. That fact is undisputed. Pendzimas does not challenge the district court's finding that he committed a criminal sex offense only three years earlier or the finding that he is a higher risk to reoffend because he has committed criminal offenses over a long period of time. The unchallenged findings are sufficient to support the district court's determination that the first factor indicates a risk of future harmful sexual conduct.

With respect to the second *Linehan* factor, Pendzimas contends that, as an adult, he "has had no violent offenses" and is not aroused by violence. There is evidence to the contrary. Dr. Reitman concluded in his written report that Pendzimas has a history of aggression, that violence is an arousal factor for him, and that he has not completed sexual-arousal therapy. The district court apparently was persuaded by Dr. Reitman's assessment.

With respect to the third *Linehan* factor, Pendzimas contends that, according to the Static-99R test, the probability of his reoffending is only 13 to 17 percent, which, he asserts, is inconsistent with a high likelihood of reoffending. Both court-appointed examiners utilized several risk assessment tools and provided evidence of particular characteristics that increase Pendzimas's risk of reoffending. For example, Dr. Reitman concluded in his report that Pendzimas's risk of reoffending is higher than otherwise because he is aroused by violence and could be considered a sexual psychopath. Dr. Reitman also concluded that

Pendzimas's STABLE-2007 score "represents a need for secure inpatient treatment." The district court credited the court-appointed examiners' evidence and stated that Pendzimas "would be at an even greater risk to sexually reoffend with the combination of deviance and psychopathy."

With respect to the fourth *Linehan* factor, Pendzimas contends that he is able to find secure housing because he has property on which he could build a home and that he has a supportive family. Dr. Dority acknowledged Pendzimas's testimony about his ability to establish a residence and about the supportive people around him. But Dr. Reitman concluded in his report that Pendzimas would have difficulty finding employment because of his sex-offender status and generally would encounter difficulty establishing a stable environment. That evidence supports the district court's finding that Pendzimas has "the beginning of a support system" but that it is not sufficient.

With respect to the fifth *Linehan* factor, Pendzimas contends that he has not used violence in the recent past. But Pendzimas's most-recent offense was one in which he touched his victim. Dr. Reitman testified that Pendzimas's recent offenses are an escalation and continuation of his past deviant conduct. Dr. Reitman also noted that, if Pendzimas were living in the community, he would have access to potential victims in the same way as in the past. The district court found that Pendzimas has been unsuccessful when supervised in the community, that his release plan does not substantially differ from his past lifestyle, and that Pendzimas offered no evidence that he can successfully use his treatment skills in a less-secure setting.

With respect to the sixth *Linehan* factor, Pendzimas contends that he completed a sex-offender treatment program during his imprisonment for his most recent crime. Pendzimas attended sex-offender treatment in 1997, 2004, 2006, 2013, and 2018 but successfully completed only the 2018 treatment program, shortly before the civil commitment trial. Dr. Reitman noted that Pendzimas's treatment history "is a very concerning dynamic which could [mean] he is not amenable to treatment and treatment may only sharpen his predatory skills." The district court credited the court-appointed examiners' evidence and found that Pendzimas has re-offended after all of his prior, unsuccessful treatment opportunities and "has demonstrated a pervasive inability to benefit from shorter term, finite, sex offender treatment."

In addition, Pendzimas contends that, if he were to reoffend in the future, he likely would do so by engaging in public exposure or voyeurism, which, he asserts, is not "harmful sexual conduct." But we have already determined that the evidence at trial supports the district court's finding that Pendzimas's past behavior of that type satisfies the statutory requirement of "harmful sexual conduct." *See supra* part A.

In light of the evidence described above, the district court did not clearly err in any of its particular findings relevant to the *Linehan* factors. Thus, the district court did not err by making an ultimate finding that Pendzimas is highly likely to engage in acts of harmful sexual conduct in the future if he is not civilly committed.

In sum, the district court did not err by granting the county's petition and civilly committing Pendzimas as a sexual dangerous person.

Affirmed.

A handwritten signature in black ink, appearing to read "Matthew Johnson", written in a cursive style.