

*This opinion is nonprecedential except as provided by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
A21-1604**

In the Matter of the Civil Commitment of: James Allen Martin.

**Filed June 27, 2022
Affirmed
Reilly, Judge**

Commitment Appeal Panel
File No. AP20-9094

James Allen Martin, Moose Lake, Minnesota (pro se appellant)

Keith Ellison, Attorney General, Michael Leonard, Assistant Attorney General, St. Paul Minnesota; and

Anthony C. Palumbo, Anoka County Attorney, Lisa Jones, Assistant County Attorney, Anoka, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Bjorkman, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant challenges the dismissal of his petition for a full discharge from the Minnesota Sex Offender Program as a sexually dangerous person. Because appellant failed to make a prima facie case for discharge and failed to show he is entitled to relief on his due-process claims, we affirm.

FACTS

Appellant James Allen Martin is indeterminately civilly committed as a Sexually Dangerous Person (SDP) in the Minnesota Sex Offender Program (MSOP). Martin's commitment relates to crimes against two women, J.V. and J.C.

In 1991, Martin began watching J.V. undress through her bedroom window. Martin asked J.V. out on a date, but she rejected him. Martin then began to "plot revenge" against J.V. Martin followed J.V. to her place of employment and broke into J.V.'s parents' home three times. On the third occasion, J.V.'s father and a neighbor interrupted Martin and began to follow Martin in their car. Martin fired three shots at the car, hitting the windshield but not injuring the passengers. Police officers investigated the incident and searched Martin's car. Officers found a loaded pistol with extra ammunition, a hunting knife, a roll of duct tape, three lengths of rope, four tent stakes, a bull whip, a shovel, a video camera, videotapes of J.V., Vaseline, and other materials. Martin was charged with two counts of second-degree assault with a dangerous weapon, among other charges. Martin admitted that he broke into J.V.'s home with the intent to kidnap, rape, murder, and bury her. Doctors diagnosed Martin with major depressive disorder and recurrent and avoidant personality disorder with schizotypal features. Martin pleaded guilty to two counts of assault and received a 72-month prison sentence on the first count and a stayed 36-month sentence on the second count. We affirmed Martin's sentence on appeal. *State v. Martin*, No. C9-92-987, 1993 WL 4131, at *1 (Minn. App. Jan. 12, 1993), *rev. denied* (Minn. March 11, 1993).

Martin began serving his prison sentence in 1992. In 1993, Martin began obsessively stalking J.C., a correctional officer in his prison unit. Martin told another inmate that he intended to propose to J.C. and would kill her if she refused. J.C. filed an incident report stating she was frightened and believed Martin needed to be committed to a mental institution. A psychologist evaluated Martin and recommended considering him for a possible mandatory assessment in MSOP. Martin agreed to participate in treatment and was transferred to a sex-offender treatment group in May 1993. Martin's progress was "poor," and he quit the program a few months later and returned to prison.

In 1995, Martin's parole agent recommended that the district court revoke Martin's stay and execute his sentence based on his failure to complete court-ordered treatment. The district court revoked Martin's stay and executed his 36-month prison sentence, stating that the interests of public safety required Martin to remain incarcerated. Martin refused to participate in sex-offender treatment during his incarceration. Martin's behavior generated several incident reports and disciplinary actions for threats and assaults against prison staff and other inmates, including derogatory statements toward female correctional officers.

Martin was released from prison in 1997. After his release, Martin bought a semi-automatic shotgun and stole confidential information about J.C. A few days later, officers arrested Martin and discovered a loaded shotgun, a pair of handcuffs, and a roll of duct tape in his car. Martin acknowledged he may have intended to use the gun to kill himself or to commit a crime against J.C. Martin pleaded guilty to being a felon in possession of a firearm and received a 52-month federal prison sentence. Martin was again ordered to participate in psychological or psychiatric treatment.

Martin was released from federal prison in December 2001. The State of Minnesota petitioned for Martin to be civilly committed as an SDP or as a mentally ill and dangerous person. The district court determined that Martin should be indeterminately committed to the custody of the commissioner as an SDP.¹ *See In re Civ. Commitment of Martin*, No. A04-1634, 2005 WL 354088, at *1 (Minn. App. Feb. 15, 2005), *rev. denied* (Minn. App. 19, 2005). We affirmed this decision on appeal. *Id.* at *4.

In June 2019, Martin petitioned the special review board (the SRB) for a full discharge from civil commitment under what is now Minn. Stat. § 253D.27, subd. 2 (2020).² The SRB recommended denying discharge. Martin petitioned the Commitment Appeal Panel (the panel) for a rehearing and reconsideration under what is now Minn. Stat. § 253D.28, subd. 1 (2020). The panel held hearings in April and June 2021. The panel heard testimony from Martin and from the independent examiner and received Martin's exhibits into evidence.

At the close of Martin's case-in-chief, the commissioner moved to dismiss the petition. The county joined the commissioner's motion. In November 2021, the panel granted the motion to dismiss Martin's petition for discharge, determining that Martin did not satisfy his burden of entering evidence that, if proved, would show that he is entitled

¹ The district court initially committed Martin as mentally ill and dangerous. But the district court later determined that it was not appropriate to commit Martin as mentally ill and dangerous. *See In re Civ. Commitment of Martin*, 661 N.W.2d 632, 637 (Minn. App. 2003), *rev. denied* (Minn. Aug. 5, 2003). The county amended its petition to commit Martin as an SDP, and the district court granted that amended petition.

² Martin originally requested transfer to community services, for a provisional discharge, or for a full discharge. Martin later withdrew his request for a transfer or a provisional discharge and sought only a full discharge.

to a full discharge from commitment. The panel also concluded that Martin was not entitled to relief on his due-process claims.

Martin appeals.

DECISION

Martin challenges the dismissal of his petition for a full discharge from commitment. An individual civilly committed to MSOP may petition the SRB for a reduction in custody. Minn. Stat. § 253D.27, subd. 2. If the SRB denies relief, the committed person may seek reconsideration of that determination from the panel. Minn. Stat. §§ 253B.185, subd. 9(f), .19, subd. 2(b) (2020).³ The commissioner may move to dismiss the petition under rule 41.02(b) of the Minnesota Rules of Civil Procedure. *Coker v. Jesson*, 831 N.W.2d 483, 489 (Minn. 2013). On a motion to dismiss a discharge petition at the close of the petitioner’s case, the panel must “view the evidence . . . in a light most favorable to the committed person.” *Id.* at 491. The panel “may not weigh the evidence or make credibility determinations.” *Id.* at 490. We review the dismissal of a discharge petition de novo. *Larson v. Jesson*, 847 N.W.2d 531, 534 (Minn. App. 2014).

I. We affirm the panel’s decision to dismiss Martin’s discharge petition.

A committed person may petition for a discharge from commitment. Minn. Stat. § 253D.27, subds. 1(b), 2 (2020). The committed person “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.” Minn. Stat. § 253D.28,

³ This statute was renumbered to Minn. Stat. § 253D.27, subd. 4, in 2021. The amendments are not relevant to the issues presented in this case.

subd. 2(d) (2020). The petitioner must satisfy this threshold burden by producing “sufficient, competent evidence that, if proven, would entitle the petitioner to relief.” *Coker*, 831 N.W.2d at 486 (quotation omitted). The burden on the committed person is a “burden of production,” not persuasion. *Id.* If the petitioner satisfies this burden of production, the party opposing the petition must prove by clear and convincing evidence that the petition should be denied. Minn. Stat. § 253D.28, subd. 2(d). For the reasons discussed below, we are satisfied that the panel properly viewed the evidence in the light most favorable to Martin and determined that he failed to satisfy his burden of entering evidence that, if proved, would show that he is entitled to a full discharge from commitment.

A person committed as an SDP “shall not be discharged unless . . . 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.” Minn. Stat. § 253D.31 (2020). As for treatment, the panel determined that Martin “has not engaged in treatment and has not yet completed any phase of the three-phase MSOP treatment program.” The panel noted that the conditions leading to his commitment “continue to be present and unresolved” and that as an “untreated sex offender, [Martin] continues to need intensive inpatient treatment.”

We agree. Martin failed to present “sufficient, competent evidence that, if proven,” would entitle him to a full discharge from commitment. *Coker*, 831 N.W.2d at 485-86. Martin offered three exhibits into evidence: (1) an order from the district court in 2002 initially committing him as mentally ill and dangerous; (2) a psychological examination

from 2005; and (3) a behavioral report from MSOP in November 2020. Martin also called a doctor who had been appointed as the panel's independent examiner to conduct a records review and examine Martin.⁴ The independent examiner assessed Martin with "a Personality Disorder Not Otherwise Specified, predominately with antisocial features," and "Sexual Sadism." The independent examiner explained that sexual sadism means a person is "sexually aroused by another person's suffering [and] humiliation." The independent examiner testified that Martin meets the criteria for this disorder because of his fixation on his victims and his desire to humiliate, rape, and kill women. The independent examiner noted that Martin also shows antisocial features because "[h]e violates the rights of others, he tends to hold grievances, [and] he tends to blame others for his behaviors." The independent examiner stated that Martin is not forthcoming about his sexual thoughts and interests and has not participated in treatment in the 17 years he has been in MSOP. Martin acknowledged during his own testimony that he did not participate in treatment since his admission into MSOP.

The panel also determined that Martin "poses a danger to the public" and cannot make an acceptable adjustment to open society. The panel found Martin "would present a high risk of re-offending" if he were discharged, and that "[t]he public would not be reasonably safe." The panel concluded that until Martin successfully completes treatment, he cannot "adjust to open society." Again, we agree. The independent examiner prepared

⁴ When considering a motion to dismiss, the panel may not weigh evidence and must view the evidence in the light most favorable to the petitioner. *Larson*, 847 N.W.2d at 535. Here, the propriety of considering evidence from the independent examiner at this stage is not at issue in this appeal.

a risk assessment for Martin and found that he “was at high-risk to reoffend.” The independent examiner did not believe this is an acceptable level of risk, given Martin’s untreated status. The independent examiner believed that Martin “remains dangerous to the public.” Nor did the independent examiner believe Martin can make an acceptable adjustment to open society.

Martin claims that he is “not currently suffering from a lack-of-control of harmful behavior.” We are not persuaded. The independent examiner noted that Martin appeared to be in control of his behavior during the examination and had exhibited “behavioral control for the past three years.” Even so, the independent examiner explained that Martin is in an environment in MSOP where he has been unable to show these behaviors. Caselaw recognizes that good behavior, while an individual is under supervision, is not determinative of good behavior upon discharge from commitment. *See In re Bobo*, 376 N.W.2d 429, 432 (Minn. App. 1985) (reasoning that a period of nonoffending is not necessarily indicative of control or good behavior when a person is in an environment that does not present an opportunity to reoffend). The independent examiner noted that “nothing’s changed really since [Martin has] been committed” to MSOP because Martin does not believe he has a problem and will not participate in treatment.

Martin asserts, without having produced any supporting evidence, that he is no longer a danger to the public and is not an SDP. But “conclusory assertions by a committed person,” standing alone, are insufficient to avoid dismissal of a discharge petition under rule 41.02(b). *In re Civ. Commitment of Poole*, 921 N.W.2d 62, 69 (Minn. App. 2018), *rev. denied* (Minn. Jan. 15, 2019). As a result, the panel determined that Martin “has not

submitted any competent evidence that supports a finding that he is eligible for discharge.” The panel’s determination is supported by ample evidence in the record. Thus, we conclude that the panel did not err by dismissing Martin’s petition for discharge from commitment.

II. Martin is not entitled to relief on his due-process claims.

Martin argues he has a right to discharge from commitment on due-process grounds. We address each argument in turn.

Ongoing Commitment. Martin claims his continued commitment violates his constitutional right to due process because (1) he does not have “an everlasting personality disorder causing a lack of behavioral control or a sexual sadism disorder”; (2) a person’s mental condition is changeable; (3) it is not reasonable to continue his commitment as an SDP based on his level of dangerousness; (4) it is unreasonable to require him to participate in treatment without a showing that he currently suffers from a disorder; and (5) it is “unreasonable to conclude [he] must demonstrate the capability of making an acceptable adjustment to open society.”

We construe these arguments as a challenge to whether Martin’s continued commitment is reasonably related to the reason for his original commitment. A person may be civilly committed as an SDP if the person “(1) has engaged in a course of harmful sexual conduct . . .; (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.” Minn. Stat. § 253D.02, subd. 16 (2020). The purposes of the commitment statute are treatment of the committed person and protection of the public, rather than punishment of

the committed person. *In re Civ. Commitment of Lonergan*, 811 N.W.2d 635, 642 (Minn. 2012). “Due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.” *Lidberg v. Steffen*, 514 N.W.2d 779, 783 (Minn. 1994) (citation omitted). A person “can remain confined for only so long as he . . . continues both to need further inpatient treatment and supervision for his sexual disorder and to pose a danger to the public.” *Poole*, 921 N.W.2d at 66, 69 (citation omitted). The statutory discharge procedure for a person civilly committed as an SDP has been upheld in the face of a constitutional challenge. *Id.* at 69-70.

Martin failed to present evidence that he no longer needs inpatient treatment or that he no longer poses a danger to the public. Martin asserts that he is no longer dangerous and that he does not need treatment. But conclusory assertions cannot establish relief. *See id.* at 69. The panel heard testimony that Martin has a personality disorder not otherwise specified, predominately with antisocial features. The independent examiner also diagnosed Martin with sexual sadism. It is uncontested that Martin has not received treatment while at MSOP. And the independent examiner testified that Martin remains at a high risk of reoffending. Martin did not call any witnesses, or present any evidence, to counter this testimony. Based on this record, we determine that Martin’s continued confinement does not violate his due-process rights.

Burden of Proof. Martin argues that he “bears no burden of proving mental disorders do not exist,” and that “[r]equiring a committed person to prove a lack of present mental illness” violates his due-process rights. We do not agree. Under the plain language

of the statute, a person seeking discharge from commitment “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.” Minn. Stat. § 253D.28, subd. 2(d). Only if a petitioner satisfies this burden of production does the burden shift to the opposing party to show by clear and convincing evidence why the petition should be denied. *Id.* As we recognized in *Caprice v. Gomez*, requiring a committed person to bear the initial burden of going forward with evidence in a discharge proceeding is not unconstitutional because the state has the ultimate burden of persuasion. 552 N.W.2d 753, 758 (Minn. App. 1996), *rev. denied* (Minn. Oct. 29, 1996). Given the plain language of the statute and the holding in *Caprice*, we reject Martin’s burden-of-proof argument.

Bias. Martin argues that his due-process rights were violated because the commissioners and panel judges are compensated by the Minnesota Department of Human Services and may be biased against him. *See* Minn. Stat. § 253B.19, subd. 1 (2020) (providing that “[t]he supreme court shall establish an appeal panel” and setting compensation). Martin does not identify any specific instances of bias and “[a]n assignment of error based on mere assertion and not supported by legal authority or argument is waived unless prejudicial error is obvious on mere inspection.” *In re Robb*, 622 N.W.2d 564, 574 (Minn. App. 2001), *rev. denied* (Minn. Apr. 17, 2001). Martin has not shown prejudicial error justifying relief from this court. While Martin objects to the panel’s rulings, these rulings do not reflect bias. *See Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008) (noting that “[p]revious adverse rulings by themselves do not demonstrate judicial bias”). We therefore reject this argument.

Remaining Arguments. For the first time on appeal, Martin argues that his due-process rights were violated because (1) the discharge statute is void for vagueness; (2) the panel violated the principle of collateral estoppel; and (3) the panel was biased against him because he filed a complaint against the independent examiner. Because these arguments were not raised below, we do not consider them. *See In re Civ. Commitment of Kropp*, 895 N.W.2d 647, 653 (Minn. App. 2017) (declining to consider issue that was not raised to the judicial appeal panel), *rev. denied* (Minn. June 20, 2017). Additionally, to the extent that Martin tried to raise additional due-process arguments, we conclude that they are inadequately briefed and not properly before this court. *See id.* (declining to reach an issue absent adequate briefing). As a result, we do not consider these issues.

Affirmed.