

*This opinion is nonprecedential except as provided by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
A22-1332**

In re the Matter of the Civil Commitment of:
Malcolm Renfro.

**Filed March 6, 2023
Affirmed
Bjorkman, Judge**

Ramsey County District Court
File No. 62-MH-PR-21-670

Mary Huot, St. Paul, Minnesota (for appellant Malcolm Renfro)

John J. Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney,
St. Paul, Minnesota (for respondent Ramsey County)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and
Reilly, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his indeterminate civil commitment as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP), arguing that the district court clearly erred in finding that (1) he “engaged in a course of harmful sexual conduct,” (2) he exhibited “a habitual course of misconduct in sexual matters,” and (3) there was no less-restrictive treatment program available that would accept him and would offer services consistent with his treatment needs and the requirements of public safety. We affirm.

FACTS

Appellant Malcolm Renfro committed the first of three sex crimes in June 2012, when he was 17 years old. He offered to walk an 18-year-old acquaintance to her cousin's house late at night. As they walked through a park, he grabbed the victim and pulled down her pants. Despite her multiple pleas for him to stop, Renfro got on top of her and vaginally penetrated her. The assault caused injuries to the victim's neck, lower back, and vaginal area.

One month later, Renfro met a 16-year-old girl. After communicating via social media and text messages, Renfro asked her to meet him early one morning at a store. Shortly after she arrived, Renfro suggested they go to his sister's house. Renfro walked behind the house and asked the girl to follow. Once there, he pulled down her shorts, pinned her to the ground on her stomach, and anally penetrated her. Renfro ignored her pleas to stop; the assault caused bruising on the girl's body.

In April 2013, Renfro met another 16-year-old girl through a friend. After she left that friend's house, Renfro texted her and asked her to meet him at a different house. When she arrived, Renfro brought her inside the garage. He closed the garage door and sat next to her on a couch, where he began rubbing her legs. When she moved his hand away, Renfro pushed her over, got on top of her, and started choking her. When she tried to unlock her phone to call for help, Renfro grabbed her arm with one hand and continued choking her with the other. He then pulled her pants down and vaginally penetrated her while she repeatedly told him to stop and tried to fight him off. When she managed to sit up and attempted to pull up her pants, Renfro struck her face with his open hand.

In August 2013, Renfro pleaded guilty as an adult to two counts of first-degree criminal sexual conduct and one count of third-degree criminal sexual conduct. He received concurrent 144-month prison sentences. Despite pleading guilty, Renfro continues to deny any wrongdoing. Accordingly, he did not participate in sex-offender treatment while he was in Minnesota Department of Corrections (DOC) custody.

As Renfro's period of incarceration was ending, the DOC referred him to respondent Ramsey County for civil commitment. The county petitioned to have Renfro civilly committed as an SDP and an SPP. The commitment petition was based on Renfro's three criminal-sexual-conduct convictions and uncharged sexual misconduct that occurred while he was in prison. Renfro was disciplined six times between January 2016 and September 2021 for intentionally and openly masturbating in front of female staff. Notably, the final masturbation incident occurred after Renfro learned that the DOC had referred him to the county for civil commitment.

As part of the commitment proceedings, the district court appointed Andrea Lovett, Ph.D., L.P., to examine Renfro. At Renfro's request, the district court appointed Amber Lindeman, Psy.D., as the second examiner. Both examiners interviewed Renfro, reviewed his records, and conducted multiple statistical risk assessments. They submitted detailed reports addressing the statutory criteria for commitment. Both examiners stated that Renfro "engaged in a course of harmful sexual conduct" and "a habitual course of misconduct in sexual matters." Dr. Lovett concluded that Renfro met the criteria for commitment as an SDP. Dr. Lindeman—Renfro's chosen examiner—concluded that he met the criteria for commitment as both an SDP and an SPP.

Dr. Lovett further concluded that Renfro needs long-term, inpatient sex-offender treatment, and that the only appropriate placement for Renfro is the Minnesota Sex Offender Program (MSOP) because lifetime supervision would neither meet his treatment needs nor protect the public. She specifically noted:

The least restrictive alternative to commitment is the inpatient program at Alpha Emergence Behavioral Health, but this is not an appropriate placement for [Renfro]. The program is only two years in duration, and participants have access to the community after one year. Mr. Renfro has a substantial history of impulsivity, irresponsibility, denial of responsibility, criminal attitudes/cognitive distortions, sexual misconduct, and verbal and physical aggression. There is little or no evidence suggesting he is capable of consistent, responsible, law-abiding behavior in the community.

The district court held an evidentiary hearing in March 2022. Drs. Lovett and Lindeman testified consistent with their reports. Dr. Lindeman added that she saw no viable less-restrictive alternative to civil commitment. She described significant concerns about Renfro's ability to cooperate with intensive supervised release (ISR), given his inability to follow rules or participate in sex-offender treatment while incarcerated. She specifically opined that programming such as the alternative Renfro suggested would not be adequate to meet his treatment needs, and that ISR—even if coupled with GPS monitoring—would not address public-safety concerns.

The ISR agent who would supervise Renfro if he were released into the community also testified regarding less-restrictive treatment alternatives and public-safety concerns. She provided an overview of community-based programming options that might be available to Renfro, stating that the only potential inpatient option—Alpha Human

Services—is “kind of hit or miss because they only have like three openings ever at a time, if that, and they are . . . gobbled up pretty quickly.” She also explained that GPS monitoring would not “guarantee public safety” because ISR agents are not able to immediately respond when a supervisee leaves their home without authorization or cuts their GPS bracelet.

Renfro testified that he thought his victims wanted to have sex with him because they “never said no.” He acknowledged that he did not participate in sex-offender treatment while in prison. But he stated that he would do so if he were released and thought it would “help [him] understand what this 16/17-year-old Malcolm was thinking at the time these incidents happened.”

Renfro’s family pastor testified about her 25-year affiliation with Transformation Ministries. She described Transformation Ministries as a “one-on-one” program designed to “transform” individuals’ thoughts and behaviors, with a “focus on bringing the African American man to know who they are so they can be productive and begin to find their purpose in life.” She testified that she would offer Renfro “[g]uidance, coaching, support, you know whatever I can do to help him become a better man” through one-hour weekly meetings. But she conceded that she is not educated or trained to treat sex offenders.

The district court found that clear and convincing evidence established that Renfro met the statutory and other legal requirements for commitment as an SDP and an SPP. The district court also found that Renfro did not offer clear and convincing evidence that a less-restrictive treatment program is available, noting that both examiners recommended against it and the ISR agent testified that Renfro had neither been accepted to an appropriate

program nor could count on one being available. In July 2022, the district court ordered that Renfro be indeterminately committed to MSOP.

Renfro appeals.

DECISION

A person may be civilly committed as an SDP or an SPP if the county proves the statutory commitment criteria by clear and convincing evidence. Minn. Stat. § 253D.07, subd. 3 (2022). We review a district court’s factual findings on the elements of the civil-commitment statutes for clear error. *In re Civ. Commitment of Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006), *rev. denied* (Minn. June 20, 2006). Under this standard, we view the evidence in a light most favorable to the findings, do not reweigh the evidence, and do not resolve conflicting evidence. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021). We will not set aside findings of fact as clearly erroneous unless “we are left with a definite and firm conviction that a mistake has been committed.” *Id.* at 221 (quotation omitted). But whether the evidence meets the statutory requirements for commitment is a question of law, which we review de novo. *In re Civ. Commitment of Crosby*, 824 N.W.2d 351, 356 (Minn. App. 2013), *rev. denied* (Minn. Mar. 27, 2013).

An SDP is a person who: (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 (2022). An SPP is a person who (1) has “conditions of emotional instability,” impulsive behavior, “lack of customary standards of good judgment,” “failure to appreciate the consequences of personal acts, or a combination of any of these

conditions, which render the person irresponsible for personal conduct with respect to sexual matters”; (2) has “an utter lack of power to control” his sexual impulses, as evidenced by “a habitual course of misconduct in sexual matters”; and (3) “as a result, is dangerous to other persons.” Minn. Stat. § 253D.02, subd. 15 (2022).

If a district court determines that clear and convincing evidence supports commitment as an SDP or an SPP,

the 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 [person] under commitment, and is consistent with the person’s treatment needs and the requirements of public safety.

Minn. Stat. § 253D.07, subd. 3.

Renfro’s narrow challenges to his SDP and SPP commitment focus on the district court’s factual determinations that he “engaged in a course of harmful sexual conduct” and exhibited “a habitual course of misconduct in sexual matters,” and that there was not clear and convincing evidence that a less-restrictive treatment program is available, willing to accept him, and consistent with his treatment needs and public safety. We address each of Renfro’s contentions in turn.

I. The district court did not clearly err by finding that Renfro engaged in “a course of harmful sexual conduct” and exhibited “a habitual course of misconduct in sexual matters.”

“Harmful sexual conduct” is defined as “sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another.” Minn. Stat. § 253D.02, subd. 8(a) (2022). It is presumed that the conduct underlying convictions for criminal

sexual conduct in the first and third degree meets this definition. Minn. Stat. § 253D.02, subd. 8(b) (2022) (establishing a rebuttable presumption). Repeated incidents may constitute a “course” of harmful sexual conduct even if they did not occur recently, and “the existence of a period in which a person has not committed sex offenses does not preclude a determination that he engaged in a course of sexual misconduct.” *Stone*, 711 N.W.2d at 837-38. In determining whether a person engaged in a course of harmful sexual conduct, courts consider “both conduct for which the [person] was convicted and conduct that did not result in a conviction.” *Id.* at 837.

Renfro argues that his three criminal-sexual-conduct offenses do not constitute a course of harmful sexual conduct because he committed them more than ten years ago. And he asserts that the six times he was disciplined for masturbating in front of female prison staff is insufficient to demonstrate a habitual course of misconduct in sexual matters. We are not persuaded by Renfro’s legal or factual assertions.

First, Renfro cites no supporting legal authority. *See Christie v. Est. of Christie*, 911 N.W.2d 833, 837 n.4 (Minn. 2018) (stating that arguments without analysis or citation to legal authority are waived); *State, Dep’t of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to consider an inadequately briefed question); *In re Civ. Commitment of Kropp*, 895 N.W.2d 647, 654 (Minn. App. 2017) (applying *Wintz* in a civil-commitment matter), *rev. denied* (Minn. June 20, 2017). His three convictions establish a presumption that he engaged in harmful sexual conduct. The fact that he committed his harmful criminal acts approximately a decade ago does not preclude the district court from finding that the offenses establish a “course” of conduct.

See In re Robb, 622 N.W.2d 564, 573-74 (Minn. App. 2001) (ten-year gap between sexual offenses), *rev. denied* (Minn. Apr. 17, 2001). Likewise, that Renfro has not reoffended in the same way over the past decade—while he was incarcerated—does not mean the district court clearly erred. *See In re Irwin*, 529 N.W.2d 366, 374-75 (Minn. App. 1995) (affirming appellant’s civil commitment as an SPP and as mentally ill and dangerous despite a lack of harmful criminal acts while appellant was imprisoned), *rev. denied* (Minn. May 16, 1995).

Second, the record supports the district court’s findings regarding Renfro’s continued course of sexual misconduct. Both examiners testified that Renfro “engaged in a course of harmful sexual conduct” and “a habitual course of misconduct in sexual matters.” Dr. Lovett expressly based her findings on Renfro’s criminal offenses and the six prison masturbatory incidents, defeating his contention that any course of behavior ended in 2013. Without the benefit of sex-offender treatment, Renfro continued to act out sexually, even after he had learned that DOC had referred him for civil commitment. We discern no error by the district court in considering both the presumed harmful sexual conduct that resulted in convictions and Renfro’s repeated masturbation in front of female prison staff. *See In re Civ. Commitment of Ramey*, 648 N.W.2d 260, 268 (Minn. App. 2002) (stating a “course of conduct” takes into account both conduct for which a person was convicted and conduct that did not result in a conviction), *rev. denied* (Minn. Sept. 17, 2002).

In sum, the record supports the district court’s finding that Renfro engaged in a course of harmful sexual conduct and exhibited a habitual course of misconduct in sexual matters. Because Renfro does not otherwise challenge the district court’s determinations

that he meets the statutory criteria for commitment as an SDP and an SPP, we affirm that determination.

II. The district court did not clearly err by finding that there is no less-restrictive treatment program that is available, willing to accept Renfro, and would meet both treatment and public-safety needs.

A person opposing commitment does not have the *right* to be placed in a less-restrictive treatment program. *In re Kindschy*, 634 N.W.2d 723, 731 (Minn. App. 2001), *rev. denied* (Minn. Dec. 19, 2001). Rather, they must prove, by clear and convincing evidence, that such a program is available, willing to accept them, and will meet their treatment needs and the public's need for safety. Minn. Stat. § 253D.07, subd. 3. In considering treatment alternatives, courts may consider factors such as the need for security, whether the individual needs long-term treatment, and what type of treatment is required. *In re Pirkkl*, 531 N.W.2d 902, 910 (Minn. App. 1995), *rev. denied* (Minn. Aug. 30, 1995); *In re Bieganowski*, 520 N.W.2d 525, 531 (Minn. App. 1994), *rev. denied* (Minn. Oct. 27, 1994). Unless it is clearly erroneous, we will not reverse a district court's finding regarding the availability of a less-restrictive treatment program. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

Renfro argues that he met his burden of proof because Transformation Ministries is an appropriate treatment option and that the public's need for safety will be met by his lifetime period of supervised release and the numerous conditions his ISR agent will impose. These contentions are unavailing.

Renfro does not directly address the factors and evidence the district court considered in finding that no less-restrictive treatment program was available. He points

to the ISR agent's testimony about the conditions of his release, but he completely ignores her testimony that the only potential inpatient treatment program was not necessarily available to him—let alone willing to accept him—and that GPS monitoring would not address public-safety concerns. He also ignores the recommendations of both examiners that he be committed to MSOP because it is the only viable treatment option that addresses both public safety and Renfro's treatment needs. And he does not explain how the proposed weekly one-on-one counseling with his pastor—who concedes she is not trained to treat sex offenders—will appropriately meet his treatment needs. Renfro is an untreated sex offender who committed violent offenses in the community and continued to engage in sexual misconduct while in prison. On this record, we discern no clear error in the district court's finding that Renfro did not provide clear and convincing evidence of a less-restrictive treatment alternative that is available and willing to accept him, that will adequately meet his treatment needs and the public's need for safety.

Affirmed.