

*This opinion is nonprecedential except as provided by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
A23-0896**

Susan P. Robinson,
Relator,

vs.

Minnesota Department of Human Services,
Respondent.

**Filed February 5, 2024
Affirmed
Segal, Chief Judge**

Department of Human Services
File Nos. 2795521, 3070818

Susan P. Robinson, Otsego, Minnesota (pro se relator)

Keith Ellison, Attorney General, Benjamin C. Johnson, Assistant Attorney General,
St. Paul, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Segal, Chief Judge; and
Connolly, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this certiorari appeal, relator challenges a decision by respondent-agency permanently disqualifying relator from employment for which a background study is required under the Minnesota Department of Human Services Background Studies Act, Minn. Stat. §§ 245C.01-.34 (2022). Relator argues that the agency erred by equating her

disqualifying criminal convictions for bank robbery under federal law to aggravated robbery, instead of simple robbery, under Minnesota law. Relator argues that when her federal convictions are properly classified, her period of disqualification should have been 15 years, not the permanent disqualification required for individuals convicted of crimes akin to aggravated robbery under Minnesota law. We affirm.

FACTS

Respondent Minnesota Department of Human Services (DHS) is required by statute to conduct background studies on individuals “who will have direct contact with persons served by [a licensed] facility, agency, or program.” Minn. Stat. § 245C.03, subd. 1(a)(3). Around March 2022, DHS received a request to conduct a background study on relator Susan P. Robinson, who purportedly sought employment as a personal-care attendant. The background study revealed that Robinson has seven criminal convictions: a 2010 conviction for theft by swindle in Hennepin County and six convictions in 1993 for the federal crime of “armed bank robbery” in the Western District of Wisconsin. DHS determined that Robinson’s convictions for bank robbery under federal law were “substantially the same as” the offense of aggravated robbery under Minnesota law, and therefore the convictions permanently disqualified Robinson from direct-contact employment.

Robinson requested reconsideration. In her request, she asserted that the information relied on by DHS was incorrect because she was not charged with or convicted of “armed bank robbery.” In support of her request, she submitted a 1998 order from a federal district court judge that amended the “nature of offense” on the federal judgment

of conviction to reflect that Robinson was convicted of “bank robbery and incidental crimes” rather than “armed bank robbery.”

DHS affirmed the disqualification. DHS acknowledged that the nature of the offense for Robinson’s federal convictions had been changed from “armed bank robbery” to “bank robbery and incidental crimes.” But DHS determined that the change was immaterial because the statute that Robinson was convicted under—18 U.S.C. § 2113(a) (1988)—did not change and therefore “[t]he elements of that crime remain substantially the same as” aggravated robbery under Minnesota law. Based on this determination, DHS affirmed the decision that Robinson’s convictions for bank robbery permanently disqualified her from direct-contact employment.

DECISION

A decision on a request for reconsideration of a disqualification is a quasi-judicial decision. *Rodne v. Comm’r of Hum. Servs.*, 547 N.W.2d 440, 444 (Minn. App. 1996). On appeal from such decisions, this court considers “whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.” *Anderson v. Comm’r of Health*, 811 N.W.2d 162, 165 (Minn. App. 2012) (quotation omitted), *rev. denied* (Minn. Apr. 17, 2012).

Under Minnesota law, DHS must conduct a background study on current or prospective employees or contractors of a DHS-licensed facility, agency, or program who will have direct contact with persons served by the facility, agency, or program. Minn. Stat. § 245C.03, subd. 1(a)(3). An individual may be disqualified “when a background

study completed under this chapter shows . . . [by] a preponderance of the evidence . . . that the individual has committed an act or acts that meet the definition of any crimes listed in section 245C.15.” Minn. Stat. § 245C.14, subd. 1(a)(2). A person is permanently disqualified from direct-contact employment if the person has committed an “offense in any other state or country, where the elements of the offense are substantially similar to any of the offenses listed in [Minn. Stat. § 245C.15, subd. 1(a)].” Minn. Stat. § 245C.15, subd. 1(c); *see also* Minn. Stat. § 245C.14, subd. 1. As relevant here, the offenses listed in Minn. Stat. § 245C.15, subd. 1(a), include aggravated robbery under Minn. Stat. § 609.245 (2022). Under chapter 245C, individuals convicted of simple robbery under Minnesota law or the equivalent are subject to only a 15-year disqualification. Minn. Stat. § 245C.15, subd. 2(a).

DHS determined that Robinson is permanently disqualified from direct-contact employment due to her federal bank-robbery convictions. Robinson argues that DHS erred in this determination because the elements of bank robbery are substantially similar to the elements of simple robbery under Minn. Stat. § 609.24 (2022), not aggravated robbery, and therefore the 15-year disqualification in Minn. Stat. § 245C.15, subd. 2(a), (d), is applicable, not a permanent disqualification. *See also* Minn. Stat. § 245C.14, subd. 1(a)(1).

Minnesota law distinguishes between simple and aggravated robbery. A person can be convicted of simple robbery under Minn. Stat. § 609.24 on proof of the following:

Whoever, having knowledge of not being entitled thereto, takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person to overcome the person’s resistance or powers of resistance to, or to compel acquiescence in, the

taking or carrying away of the property is guilty of robbery
....

Simple robbery may be elevated to first-degree or second-degree aggravated robbery if additional elements are established. An individual is guilty of first-degree aggravated robbery if “while committing a robbery” the individual “is armed with a dangerous weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon, or inflicts bodily harm upon another.” Minn. Stat. § 609.245, subd. 1. And an individual is guilty of second-degree aggravated robbery if “while committing a robbery” the individual “implies, by word or act, possession of a dangerous weapon.” *Id.*, subd. 2. Thus, a simple robbery under Minnesota law is elevated to a first- or second-degree aggravated robbery upon proof of the presence of *any one* of the following elements: (1) a dangerous weapon, (2) an article fashioned or used in a way that causes the victim to reasonably believe the article to be a dangerous weapon, (3) the infliction of bodily harm, or (4) the implication by word or act that the robber possesses a dangerous weapon.

The record here supports DHS’s determination that Robinson’s federal offenses equate to armed robbery under Minnesota law. The federal bank-robbery statute, under which Robinson was convicted, contains the following elements of proof:

Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another, or obtains or attempts to obtain by extortion any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union

18 U.S.C. § 2113(a).

Robinson argues that DHS erred in determining that the elements of federal bank robbery are substantially similar to aggravated robbery because the federal bank-robbery statute does not require that the robber had or implied that they had a weapon or inflicted bodily harm. But this argument ignores the fact that an individual may also be permanently disqualified from direct-contact employment when “a preponderance of the evidence indicates that the individual has committed an act or acts that meet the definition of any crimes listed in section 245C.15.” Minn. Stat. § 245C.14, subd. 1(a)(2). Thus, a background study includes not only a comparison of the statutory elements of past criminal convictions, but also factual information about the offenses.

The background study conducted of Robinson references the sentencing order for Robinson’s conviction as follows: “The sentencing order indicates [Robinson] implied she had a gun at 4 of the 6 robberies and used mace or pepperguard on the tellers (at a minimum inflicted bodily harm) at the other two robberies.” The sentencing order, which is included in the record, provides additional information about Robinson’s federal crimes:

The court finds [Robinson] robbed six banks in the Western District of Wisconsin. On two of the six occasions she sprayed mace or pepperguard at tellers after the robbery to restrain them in order to facilitate her escape. She cuffed a teller in a third robbery, again restraining that teller in order to facilitate her escape. To obtain the tellers’ cooperation she threatened them on four occasions with a gun, advising that she had a gun and would shoot. She similarly expressed the threat of death by use of the gun through her words, actions and conduct at those four robberies.

Robinson’s convictions and sentence were affirmed on appeal. *United States v. Robinson*, 20 F.3d 270 (7th Cir. 1994). Notably, the Seventh Circuit rejected Robinson’s arguments

that the district court erred by enhancing her sentence based on the determinations that she made a threat of death by stating she had a gun, possessed a toy gun, and inflicted bodily injury by spraying mace during the robberies. *Id.* at 276-79. This evidence supports DHS's conclusion that Robinson's federal convictions equate to aggravated robbery under Minnesota law. Robinson's threat that she had a gun during four of the robberies, and her conduct in spraying the bank tellers with a chemical irritant that caused bodily injury during the other two, fall squarely within the aggravated-robbery statute.

The information contained in the background study thus supports DHS's determination that a preponderance of the evidence indicates that Robinson committed offenses that equate to aggravated robbery under Minnesota law. DHS therefore properly determined that she is permanently disqualified from direct-contact employment.

Affirmed.