

STATE OF MINNESOTA
COUNTY OF HENNEPIN

FILED
COMMITMENT APPEAL PANEL
April 24, 2020
Appeal Panel File No. AP18-9063
OFFICE OF
APPELLATE COURTS

In the Matter of the Civil Commitment of:

Anthony Glenn Musser.

County File No.: 27-P0-99-060056

ORDER

The above-entitled matter came on for hearing before the Commitment Appeal Panel at the Washington County Courthouse, Stillwater, Minnesota, on January 10, 2019. Anthony Glenn Musser (“Petitioner”) appeared personally with his attorney Roderick Hale. Assistant Attorney General Anthony Noss appeared on behalf of the Commissioner of Human Services (“Commissioner”). Assistant Hennepin County Attorney Annsara Elasky appeared on behalf of Hennepin County.

This matter was before the Panel based on Petitioner’s petition for rehearing and reconsideration of the Special Review Board’s (“SRB”) recommendation to deny his request for provisional discharge or full discharge from his civil commitment as a Sexually Dangerous Person (“SDP”) and Sexual Psychopathic Personality (“SPP”). At the previous Phase I hearing on May 24, 2019, Petitioner withdrew his request for full discharge and asked the Panel to only consider provisional discharge. On July 15, 2019, the Panel issued an Order finding Petitioner met his initial burden on his petition for provisional discharge, and granted Petitioner a Phase II hearing.

At the Phase II hearing, the Commissioner’s exhibits 100-126 were offered and received without objection. Petitioner’s additional exhibits 25-32 were offered by Petitioner.¹ The Commissioner objected to exhibits 30 and 32. The Panel received exhibit 30 over the

¹ Petitioner’s exhibits 1-24 were offered at the Phase I hearing and discussed in the Panel July 15, 2019 Order.

Commissioner's objection, but did not receive exhibit 32 because it was irrelevant to the proceedings. At the Phase II hearing, both the Commissioner and Petitioner offered testimony and documentation on the issue of provisional discharge.

Based upon all files, evidence, and proceedings herein, the Panel makes the following:

FINDINGS OF FACT:

Background and Procedural History

1. Petitioner is a 63 year old male who was committed as SDP and SPP by final Order dated March 27, 2000. Petitioner currently resides at Community Preparation Services ("CPS") in St. Peter, Minnesota. Petitioner is currently in Phase III of MSOP's three-phase treatment program.
2. Petitioner's criminal history includes convictions for the sexual abuse of three minors. Petitioner's victims include his step-daughter and twin step-sons. Petitioner has self-reported that he had approximately 41 victims of harmful sexual conduct, ranging in age from infant to adult. Petitioner committed sex offenses between the ages of 12 and 35. Petitioner's sex offense history includes instances of force, violence, and restraint.
3. Petitioner petitioned the SRB for provisional and full discharge on September 4, 2017. The SRB held a hearing on the petition on April 19, 2018. In their Findings of Fact and Recommendation dated May 9, 2018, the SRB recommended to deny Petitioner's request for provisional and full discharge. The SRB found that Petitioner's treatment needs could be met in the community, but he had not yet arranged for a community residence or set up treatment options. Petitioner filed a Rehearing Petition on June 11, 2018, asking the Panel to reconsider the SRB's decision.

4. A Phase I hearing was scheduled before the Panel on May 24, 2019. At the hearing, Petitioner withdrew his request for full discharge, and asked the Panel to only consider provisional discharge. At the close of Petitioner's case, the Commissioner moved to dismiss Petitioner's petition for provisional discharge pursuant to Minn. R. Civ. P. 41.02(b). The Panel took the matter under advisement.
5. On July 25, 2019, the Panel issued an Order finding Petitioner met his initial burden of production on his provisional discharge petition and was entitled to a Phase II hearing, where the Commissioner would have the burden to prove by clear and convincing evidence that provisional discharge was not appropriate. After a scheduling conference, the Phase II hearing was scheduled for January 10, 2020.² At the Phase II hearing, both the Commissioner and Petitioner offered testimony and documentation on the issue of provisional discharge. At the close of their cases, the Panel took the matter under advisement.

Testimony of Melissa Preteau, DHS Legal Services Coordinator

6. At the Phase II hearing, Melissa Preteau, DHS Legal Services Coordinator, testified, in part, to the following:
 - a. Part of Preteau's responsibilities are to oversee the SRB process. She reviews all SRB documents prior to the SRB hearing and compiles them into the SRB packet. Petitioner's SRB packet (Ex. 125) included 23 exhibits. Preteau testified that Petitioner's SRB packet did not include any provisional discharge plan.
 - b. Preteau testified that as of March 5, 2019, all SRB packets automatically include the MSOP standard provisional discharge plan (see Ex. 123, MSOP Special

² On January 3, 2020, the Panel issued an Order substituting the Hon. Rosanne Nathanson as a Panel member for the Hon. Michael Baxter. Judge Baxter served as a Panel member for the Phase I hearing, but was unable to serve in that capacity for the Phase II. Judge Nathanson was able to review the Phase I hearing transcript prior to the hearing, which was filed July 29, 2019.

Review Board Policies). At the time of Petitioner’s SRB hearing in April 2018, standard provisional discharge plans were not included, and there was no provisional discharge plan included in Petitioner’s SRB packet.

Opinion of the Sexual Violence Risk Assessment

7. The Panel received the most recent Sexual Violence Risk Assessment (“SVRA”), dated November 26, 2019 (Ex. 107)³, and heard testimony from Dr. Cassandra Lind, the risk assessor. Dr. Lind’s testimony and the most recent SVRA contained the following information and opinions:

- a. Dr. Lind’s most recent SVRA concludes Petitioner meets the statutory criteria for provisional discharge.
- b. Dr. Lind is aware Petitioner did not submit a provisional discharge plan to the SRB, but she analyzed the provisional discharge factors based on the assumption that Petitioner would use the standard MSOP provisional discharge plan.
- c. Dr. Lind testified that if there was no provisional discharge plan, she would be unable to properly assess the second prong of the provisional discharge statute that determines whether the provisional discharge plan provides for the public safety. If no provisional discharge plan can be analyzed, Dr. Lind testified she would have to opine Petitioner does not meet the statutory criteria for provisional discharge.
- d. The lack of a provisional discharge plan would not affect the first prong of the provisional discharge analysis which deals with Petitioner’s current treatment progress. Regardless of the presence of a provisional discharge plan, Dr. Lind

³ Also submitted as Petitioner’s exhibit 27

would still find Petitioner has a good understanding of his offense cycle, triggers, and risk factors. There is some concern Petitioner continues to experience deviant sexual arousal to minors and sadistic sexual behavior. However, according to Dr. Lind, Petitioner has demonstrated transparency concerning arousal and has used his treatment skills to manage these deviant thoughts.

- e. Dr. Lind testified that Petitioner could continue to work on managing his deviant thoughts and fantasies in a community-based treatment setting while on provisional discharge.

Opinion of the SRB Treatment Report

8. The Panel received the most recent SRB Treatment Report, dated November 27, 2019 (Ex. 104)⁴, and heard testimony of Christopher Schiffer, MSOP Clinical Court Services Director, who authored the “Recommendation” section that concludes the report. The SRB Treatment Report and Schiffer’s testimony contained the following information and opinions:

- a. The most recent SRB Treatment Report contains information on Petitioner’s treatment progress and concludes with MSOP Clinical Leadership’s opinion on Petitioner’s provisional discharge petition, authored by Schiffer.
- b. Schiffer testified and stated in the report that MSOP Clinical Leadership supports Petitioner’s provisional discharge petition. According to Schiffer, this recommendation is based on Petitioner’s clinical picture including skills, capacity, and treatment progress. Petitioner has completed arousal management programming and has the ability to manage deviant thoughts. Petitioner has a

⁴ Also submitted as Petitioner’s exhibit 26

history of non-deceptive polygraphs and has not masturbated to thoughts of minors.

- c. Schiffer testified that MSOP's Clinical Leadership's support of Petitioner's petition is based on the assumption he will use the standard MSOP provisional discharge plan. If this plan was not available to Petitioner, MSOP Clinical Leadership could not support his provisional discharge petition.

9. The Panel received the most recent report of Dr. Paul Reitman, the court-appointed examiner, dated December 18, 2019 (Ex. 100), and heard testimony from Dr. Reitman. Dr. Reitman's report and testimony contained the following information and opinions:

- a. Prior to authoring his report, Dr. Reitman performed a forensic interview of Petitioner and reviewed records. Dr. Reitman opined in his report and in testimony that Petitioner does not meet the statutory criteria for provisional discharge.
- b. Dr. Reitman stated he has testified in at least 100 matters before Commitment Appeal Panels, routinely testifies in civil commitment cases, and has a history of treating pedophiles and sexual sadists, like Petitioner.
- c. Dr. Reitman concurs with Petitioner's prior diagnoses of Sexual Sadism Disorder and Pedophilic Disorder. Petitioner continues to struggle with deviant fantasies and arousal.
- d. According to Dr. Reitman, Petitioner has been receiving "great treatment" at MSOP. However, MSOP does not provide the intensive psychotherapy that many pedophiles need. Petitioner requires intensive therapeutic intervention.

- e. Dr. Reitman stated Petitioner has no intimate relationships in the community and is set up to fail at this time. Petitioner has no contact with any family.
- f. Dr. Reitman testified Petitioner has worked very hard in treatment, but his treatment needs in the area deviancy can only be addressed safely in his current environment. Petitioner is “very close,” and Dr. Reitman believes he could be ready for provisional discharge in approximately 6-9 months.
- g. Petitioner’s acknowledged victim pool of 41 victims, history of sexual sadism, and his continuing deviant arousal indicate to Dr. Reitman that his risk for sexual recidivism may be higher than the actuarial scores indicate. Dr. Reitman concluded that Petitioner’s treatment progress does not indicate he no longer needs treatment or supervision in his current setting.
- h. When considering Petitioner’s provisional discharge plan and public safety, Dr. Reitman opined that even the standard MSOP provisional discharge plan would not provide a reasonable degree of protection to the public. Petitioner is still too much of a risk to sexually reoffend and has too many unmanaged risk factors to make an acceptable adjustment to open society at this time. These unmanaged risk factors cause a risk to the public if Petitioner is residing in the community.

10. Kelly Meyer, MSOP Clinician, testified, in part, to the following⁵:

- a. Meyer administers MSOP’s arousal management and hyper-sexuality programs. She also facilitates group and individual treatment sessions and the aftercare programs. Meyer is a licensed social worker.

⁵ Kelly Meyer’s Individual Progress notes are included in Petitioner’s exhibit 31

- b. Meyer has known Petitioner for 8-10 years, and Petitioner is currently in arousal management aftercare. Petitioner has reported healthy masturbation themes and has been transparent about deviant thoughts. Petitioner's goal is to manage and acknowledge deviance for the rest of his life.
- c. Meyer testified she has no concerns about Petitioner right now and stated he is "impeccable" at deviancy interventions. Petitioner has a thorough understanding of his deviancy and how it developed.

11. Miranda Byram, SRB Report Author, testified, in part, to the following:

- a. Byram is a licensed clinical counselor and marriage and family therapist.
- b. Byram has interviewed Petitioner on several occasions. According to Byram, Petitioner has worked on intimacy throughout his treatment at MSOP and CPS.

12. Petitioner testified, in part, to the following:

- a. Petitioner attends a group at the Men's Center for healthy sexual boundaries. Petitioner has been triggered by some discussions with this group. In these instances, he used ammonia intervention and discusses the issues in treatment and with Kelly Meyer.
- b. Petitioner incorporates intimacy skills building into every aspect of his treatment. Petitioner has also worked on connecting his childhood to his sexual offending. Petitioner is working on developing community support in Minnesota through participation in Men's Center groups, Sex Addicts Anonymous, and has joined a veteran's group. Petitioner wants to use community connections to gain employment.

- c. Petitioner testified he is willing to comply with the standard MSOP provisional discharge plan.

CONCLUSIONS OF LAW:

1. The party seeking provisional discharge from civil commitment initially 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). This burden is described as a “burden of production.” *Coker v. Jesson*, 831 N.W.2d 483, 486 (Minn. 2013). Once the burden of production is met, “the party opposing discharge or provisional discharge bears the burden of proof by clear and convincing evidence that the discharge or provisional discharge should be denied.” Minn. Stat. § 253D.28, subd. 2(d).
2. The burden is now on the Commissioner to prove by clear and convincing evidence that provisional discharge should be denied. *Id.*
3. Clear and convincing evidence is “more than a preponderance of the evidence but less than proof beyond a reasonable doubt” and is established “when the truth of the facts asserted is ‘highly probable.’” *Limberg v. Mitchell*, 834 N.W.2d 211, 218 (Minn. Ct. App. 2013) (quoting *Weber v. Anderson*, 269 N.W.2d 892, 895 (Minn. 1978)).
4. The Panel finds the testimony and report of Dr. Paul Reitman to be credible and persuasive on the issue of provisional discharge. Dr. Reitman has a significant history of experience testifying in both Commitment Appeal Panel matters and civil commitment cases and has specific history treating pedophiles and sexual sadists, like Petitioner. Dr. Reitman acknowledged Petitioner’s treatment progress, motivation, and skills, but also noted his large victim pool (41 acknowledged victims), sadistic sexual offending, and continuing struggles

with deviant arousal to minors and sadism. Dr. Reitman's overall opinion was thorough, articulate, and fair, and the Panel agrees Petitioner is close to being ready for provisional discharge. Petitioner's current treatment needs in the areas of intimacy, deviancy, and building community support must be addressed before he is ready to reside in the community.

5. The Panel received and considered the supportive clinical opinions of the risk assessor and MSOP Clinical Leadership. The Panel finds their information to be credible, but their ultimate opinions on provisional discharge were not persuasive to the Panel. The support of both the SRB Treatment Report (Ex. 104) and SVRA (Ex. 107) was contingent on Petitioner using the standard MSOP provisional discharge plan. Here, no provisional discharge plan, standard or otherwise, was ever submitted to the SRB or the Panel at either hearing. Schiffer and Dr. Lind both testified that if the standard MSOP provisional discharge plan were not available to Petitioner, they could not support his provisional discharge petition.
6. Minn. Stat. § 253D.30 subd. 1 governs a provisional discharge. To be provisionally discharged, the committed person must be capable of making an acceptable adjustment to open society. Minn. Stat. § 253D.30 subd. 1(a). The following factors must be considered in determining whether a provisional discharge is appropriate:
 - (1) Whether the committed person's course of treatment and present mental status indicate there is no longer a need for treatment and supervision in the committed person's current treatment setting; and
 - (2) Whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the committed person to adjust successfully to the community.

Minn. Stat. § 253D.30 subd. 1(b).

- 1) **Course of treatment and present mental status:** Petitioner has made significant treatment progress in his time at MSOP and CPS. Most importantly, Petitioner has

completed much of MSOP's arousal management programming and is currently in aftercare. Petitioner shows insight into his offending and has worked very hard to manage risk factors for sexual re-offense. Petitioner continues to struggle with deviant arousal to minors and sadism, and currently needs to focus on intimacy and building community support. Petitioner has 41 acknowledged victims and a history of sexual sadism. Petitioner is diagnosed with Pedophilic Disorder and Sexual Sadism Disorder. The Panel agrees with Dr. Reitman that while Petitioner's actuarial scores indicate low risk, his large victim pool and continuing deviant fantasies are concerning. The sadistic aspects of Petitioner's sexual disorder and his significant history of pedophilia are especially dangerous to the public. Petitioner is close, but the totality of the evidence does not indicate he no longer needs treatment or supervision in his current.

- 2) Provisional discharge plan and public safety:** Petitioner did not provide any provisional discharge plan to the SRB or the Panel at either hearing.⁶ The Panel may not grant provisional discharge "on terms or conditions that were not presented to the special review board." Minn. Stat. § 253D.28, subd. 3. Without a provisional discharge plan, the Panel cannot analyze whether the plan would provide for the public safety or allow Petitioner to make an acceptable adjustment to open society. However, the Panel agrees with Dr. Reitman that even if a standard MSOP provisional discharge plan were available to analyze, Petitioner's remaining risk factors and lack of community support indicate he would be too much of a recidivism risk to reside in the community.

⁶ Melissa Preteau, DHS Legal Services Coordinator, credibly testified that no provisional discharge plan was included in Petitioner's SRB packet (Ex. 125).

7. The Commissioner proved by clear and convincing evidence that Petitioner's provisional discharge petition should be denied.
8. The Panel acknowledges Petitioner significant treatment progress, motivation, and engagement, especially in dealing with his complex sexuality and deviancy issues. Petitioner has worked on addressing his deviancy and is currently in the aftercare portion of MSOP's arousal management programming. The Panel agrees with the court-appointed examiner that Petitioner will be ready for provisional discharge in the near future if he continues his current treatment trajectory.

ORDER:

1. Petitioner's petition for provisional discharge from his civil commitment as a Sexually Dangerous Person and Sexual Psychopathic Personality is hereby **DENIED**.
2. Petitioner's request for discharge was withdrawn and is hereby **DENIED**.

BY THE PANEL:

Robert Rancourt
Chief Judge of Panel

Joanne M. Smith

Joanne Smith
Senior Judge of District Court

Rosanne Nathanson

Rosanne Nathanson
Senior Judge of District Court