

**Supreme Court No. 20180189
District Court No. 47-06-R-290**

NORTH DAKOTA SUPREME COURT

In the Interest of William Carter

State of North Dakota
(Petitioner and Appellee)

v.

William Carter

(Respondent and Appellant)

Appeal from the Findings of Fact, Conclusions of Law, and Order Denying Discharge issued
May 8, 2018, by the Honorable Cherie Clark of the Stutsman County District Court,
Southeast Judicial District

BRIEF OF THE APPELLANT

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JURISDICTIONAL STATEMENT

[¶ 1] Jurisdiction in this matter is pursuant to N.D.C.C. § 25-03.3-19. The Stutsman County District Court filed its Findings of Facts and Conclusions of Law on May 8, 2018, ordering William Joseph Carter (“Carter”) remain civilly committed. Carter timely filed this appeal on May 15, 2018.

ISSUE PRESENTED FOR REVIEW:

- I. **[¶ 2] Whether the Stutsman County district court erred in determining that the State had met its burden of proving by clear and convincing evidence that William Joseph Carter remains a Sexually Dangerous Individual.**

STATEMENT OF THE CASE

[¶ 3] On September 26, 2006, Petitioner filed a Petition for Commitment of a Sexually Dangerous Individual pursuant to N.D.C.C. § 25-03.3. Subsequently, on February 26, 2007, Carter was committed to the North Dakota State Hospital (“NDSH”) as a Sexually Dangerous Individual (“SDI”). Carter remains confined at the NDSH as an SDI to this day.

[¶ 4] Carter exercised his right to request a discharge hearing under N.D.C.C. § 25-03.3-18. On March 19, 2018, a review hearing was held to determine whether continued civil commitment was appropriate. The Stutsman County District Court determined the State had established by clear and convincing evidence that Carter remained a SDI pursuant to N.D.C.C. § 25-03.3-01(8), and denied Carter’s discharge on May 8, 2018. Carter timely filed this appeal on May 15, 2018.

STATEMENT OF THE FACTS

[¶ 5] Carter petitioned for an annual review hearing pursuant to N.D.C.C. § 25-03.3-18 to determine whether he remained a present-day SDI. The review hearing was held March 19, 2018. The State called Dr. Erik Fox (“Fox”) to testify that Carter remained a SDI subject to continued civil commitment at the NDSH. Dr. Stacey Benson (“Benson”) testified that Carter no longer met the criteria for a SDI and, thus, should not be subject to further civil commitment at the NDSH. The parties differed on the question of whether prong three was satisfied and whether Carter has serious difficulty controlling his behavior.

[¶ 6] The Stutsman County District Court found the State had proven by clear and convincing evidence that Carter remains a SDI subject to continued civil commitment and filed an Order for Continued Treatment on May 8, 2018. Carter filed his appeal on May 15, 2018.

ARGUMENT

I. [¶ 7] The District Court erred in determining the State had met its burden of proving by clear and convincing evidence that William Joseph Carter remains a Sexually Dangerous Individual.

[¶ 8] At civil commitment hearings, the State bears the burden of proving its case by clear and convincing evidence. *In re Rush*, 2009 ND 102, ¶ 9, 755 N.W.2d 720. The State must prove, by clear and convincing evidence, that an individual has previously “[e]ngaged in sexually predatory conduct, and has a congenital or acquired condition that is manifested by a sexual disorder, personality disorder, or other mental disorder which makes that individual likely to engage in further acts of sexually predatory conduct” which comprise a danger to the physical or mental health of others. *Id.* (citing N.D.C.C. § 25-03.3-01(8)). Additionally, the State must also establish a “[c]ausal relationship or nexus between the individual’s disorder and dangerousness, which indicates the individual’s mental disorder is linked to an inability to control behavior, and which would therefore likely result in further sexually predatory conduct.” *Id.* at ¶ 9. Establishing this nexus is absolutely necessary to differentiate between a “[d]angerous sex offender whose disorder would subject him or her to civil commitment from the ‘dangerous but typical’ recidivist in the ordinary criminal case. *Id.*

[¶9] The North Dakota Supreme Court has determined that civil commitments of sexually dangerous individuals are reviewed under a “modified clearly erroneous” standard. *In re Midgett*, 2007 ND 198, ¶ 6, 742 N.W.2d 803, 805. The Court will affirm the district court’s decision unless the “[o]rder is induced by an erroneous view of the law, or [it is] firmly convinced the order is not supported by clear and convincing evidence.” *In re Anderson*, 2007 ND 50, ¶ 21, 730 N.W.2d 570. Here, the district court erred in determining the State proved by clear and convincing

evidence that Carter remains a SDI. The State must establish a “causal relationship or nexus between the individual’s disorder and dangerousness, which indicates the individual’s mental disorder is linked to an inability to control behavior.” *In re Rush*, 2009 at ¶ 9. Both *Kansas v. Crane*, 534 U.S. 407 (2002) and N.D.C.C. §. 25-03.3 require proof of difficulty in controlling behavior by expert evidence on the record from which the district court, as the ultimate decision-maker, can conclude the individual has serious difficulty controlling his or her behavior.

[¶ 10] Carter concedes the State has shown by clear and convincing evidence that he has engaged in sexually predatory conduct, as evidenced by previous convictions, and Carter understands that the review of prong one at a Review Hearing is barred via *Res Judicata*, as this Court has previously established. *Interest of Graham*, 2013 ND 171, 837 N.W.2d 382. Carter further concedes that the State has shown by clear and convincing evidence that he suffers from an actual sexual disorder, a personality disorder, or other mental dysfunction that would subject him to commitment as a sexually dangerous individual.

[¶ 11] However, this Court previously stated, “in addition to the three requirements contained in the plain language of the statute and this Court’s definition of ‘likely to engage in further acts of sexually predatory conduct,’ the United States Supreme Court held that in order to satisfy substantive due process requirements, the individual must be shown to have serious difficulty controlling his behavior.” *In re Hehn*, 2008 ND 36, ¶19, 745 N.W.2d 631. This Court further stated such a determination was required to distinguish a sexually dangerous individual from the ordinary recidivist convicted in a typical criminal case. *Id.*

[¶12] Accordingly, the district court must state specific facts which form the basis of its legal conclusions. *Matter of R.A.S.*, 2008 ND 185, ¶ 8, 756 N.W.2d 771. The court errs as a matter of law when it fails to make sufficient findings which support its legal conclusions. *Id.* Thus, this

Court “[d]efer[s] to a district court’s determination that an individual has serious difficulty controlling behavior when it is supported by specific findings demonstrating the difficulty.” *In re Johnson*, 2016 ND 29, ¶ 5, 876 N.W.2d 25. Simply analyzing one’s criminal history is not sufficient to establish serious difficulty in controlling behavior. *Id.* at ¶ 6. Additionally, the State cannot establish serious difficulty by relying solely on an individual’s progress, or lack thereof, in treatment. *Id.* at ¶ 7. While the lack of progress in treatment may be indicative of serious difficulty in controlling one’s behavior, this Court has “[d]ecline[d] to infer one equals the other.” *Id.*

[¶ 13] The State failed to prove by clear and convincing evidence that Carter poses any more of a threat than the typical criminal recidivist. Instead, the State and the district court rely on a circle argument which, if affirmed, could never be defeated. That argument being that Carter previously offended, which leads to a diagnosis, which means he will offend again. Carter is incapable of changing his past, and to dwell thereon denies him an opportunity to ever earn his release from the NDSH. Furthermore, chapter 25-03.3 of the N.D.C.C. defines a SDI, in part, as “[a]n individual . . . *who has* a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct . . .” (emphasis added). The present tense language of “who has” highlights the importance of committing only individuals who presently, at the time of the hearing, remain a SDI. Relying on an individual’s past history cannot establish this present day determination.

[¶ 14] In its Findings of Fact and Conclusions of Law, the district court states “the recent finding of the Marcus Uniforms Fall 2015 catalogue is particularly concerning to the Court. In fact, but for Mr. Carter’s possession of the catalogue, he would likely have been released” (emphasis added) (Docket ID# 213, ¶ 26). It is this catalogue which this entire case focuses on.

In fact, even Fox was ready to place Carter in the community, but under a civil commitment with placement in the community. Prior to this catalogue issue, both experts agreed Carter should be in the community. So the distinguishing factor as to whether or not Carter is distinguished from the dangerous but typical offender is a clothing catalogue.

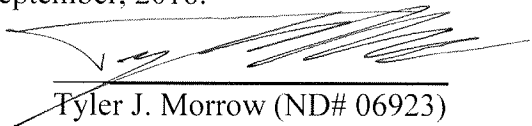
[¶ 15] Moreover, the district court also recognized Carter's work in treatment, stating "This Court realizes that Carter has made substantial progress through treatment." Adding "if Carter continues to progress and does not have violations, it is the hope of this Court that he be placed on community placement prior to the commitment being reviewed again." (Docket ID# 213, ¶ 26). Even the Court recognizes that Carter, besides for the catalogue, has remained free of behavioral violations and has done well in treatment. This hardly is the behavior of an individual who can be separated from the dangerous but typical individual.

CONCLUSION

[¶ 16] Under N.D.C.C. 25-03.3, at a petition for discharge hearing, the State bears the burden of proving an individual *remains* a sexually dangerous individual subject to civil commitment by clear and convincing evidence. This requires a present-day determination of sexual dangerous. The district court relied heavily on the catalogue to show that Carter has serious difficulty controlling his behavior, even stating he would likely be released without the catalogue having been found. In essence, it asks this Court to find that an individual found with a clothing catalogue sets that individual apart from the dangerous but typical sex offender. Although the Respondent's testimony differs from Dr. Fox's view of the situation, it is not necessary to weigh the evidence at the hearing, but only to look at the simple conclusion, and find that it does not meet the high Constitutional threshold set in these matters. A clothing catalogue is not enough to take away civil liberties for a year.

[¶ 17] Based on the arguments set forth as well as the evidence at hand, it is apparent that the State failed to meet its burden. The district court erred in determining that there was clear and convincing evidence that Carter remains a sexually dangerous individual. William Joseph Carter respectfully requests this Court reverse the decision of the district court and grant Mr. Carter his immediate release.

Respectfully submitted this 24th day of September, 2018.



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State of North Dakota,)	Supreme Court File Nos.
)	20180189
Appellee,)	
v.)	Stutsman County Criminal No.
)	47-06-R-290
William Carter,)	
)	CERTIFICATE OF SERVICE
Appellant.)	

The undersigned, being of legal age, being first duly sworn deposes and says that he served true copies of the following documents:

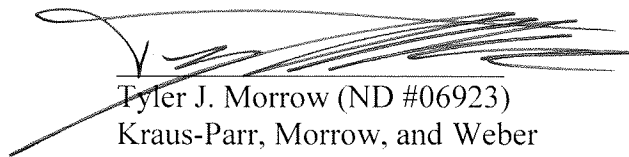
Appellant's Brief
Appellant's Appendix

And that said copies were served upon:

Frederick Fremgren, Assistant State's Attorney, 47sa@nd.gov

by electronically filing said documents via email.

Dated this 19 day of September, 2018



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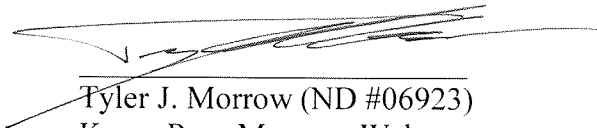
Appellant's Brief-revised

And that said copies were served upon:

Frederick Fremgren, Assistant State's Attorney, 47sa@nd.gov

by electronically filing said documents via email.

Dated this 24th day of September, 2018



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