

**Supreme Court No. 20160052
District Court No. 18-2012-MH-00150**

NORTH DAKOTA SUPREME COURT

In the Matter of Sandy Lee Mangelsen

Haley L. Wamstad, Grand Forks County State's Attorney

(Petitioner and Appellee)

v.

Sandy Lee Mangelsen

(Respondent and Appellant)

Appeal from Order for Continuing Commitment issued December 7, 2015
by Honorable Jon J. Jensen of the Grand Forks County District Court

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 Grand Forks County District Court issued a decision continuing Sandy Lee Mangelsen's civil commitment on December 7, 2015. Sandy Lee Mangelsen filed this appeal on February 4, 2016.

ISSUE PRESENTED FOR REVIEW

I. [¶ 2] WHETHER THE DISTRICT COURT ERRED IN DETERMINING THAT THE STATE HAD MET ITS BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT SANDY LEE MANGELSEN REMAINS A SEXUALLY DANGEROUS INDIVIDUAL.

STATEMENT OF THE CASE

[¶ 3] The State petitioned to commit Mangelsen as a sexually dangerous individual in November of 2012. On April 24, 2013, the Grand Forks County District Court ordered that Mangelsen be committed to the custody of the Department of Human Services as a sexually dangerous individual. On November 6, 2015, a Review Hearing was held. An Order continuing Civil Commitment was issued by the Grand Forks County District Court on December 7, 2015.

[¶ 4] Mangelsen appealed the decision of the Grand Forks County Court on February 4, 2016.

STATEMENT OF THE FACTS

[¶ 5] The complete history prior to Mangelsen’s Civil Commitment may be found in the Matter of Mangelsen, 2014 ND 31, 843 N.W.2d 08.

[¶ 6] On January 21, 2015, Mangelsen requested an Annual Review to determine if he still met the definition of a Sexually Dangerous Individual pursuant to NDCC §25-03.3-01(8).

[¶ 7] A hearing was held on November 6, 2015. The state called Dr. Jennifer Krance (hereinafter “Krance”) to testify that Mangelsen should remain civilly committed. Mangelsen called Dr. Troy Ertelt (hereinafter “Ertelt”), who found Mangelsen to not meet the definition of a sexually dangerous individual.

[¶ 8] On December 7, 2015, the District Court issued an Order continuing Mangelsen’s Civil Commitment. Mangelsen appealed this Order on February 4, 2016.

ARGUMENT

I. [¶ 9] THE DISTRICT COURT ERRED WHEN IT DETERMINED THE STATE HAD MET ITS BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT SANDY LEE MANGELSEN REMAINS A SEXUALLY DANGEROUS INDIVIDUAL.

[¶ 10] 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. The Court will affirm the trial court’s decision unless the “order 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. In Mangelsen’s case, the trial court erred in determining that the State proved by clear and convincing evidence that the State had met its burden of proving by clear and convincing evidence that Mangelsen remains a sexually dangerous individual.

[¶ 11] In its order for continued commitment, the district court offers that the State has established, by clear and convincing evidence, that Mangelsen remains a sexually dangerous individual. The District Court based this decision on the evaluation and the testimony by Krance.

a. THE COPY AND PASTE EVALUATION DONE BY DR. KRANCE FAILS IN ANY OBJECTIVE TEST TO ESTABLISH CLEAR AND CONVINCING EVIDENCE

[¶ 12] In establishing the “nexus” required in Hehn between the mental disorders and likeliness to engage in sexually predatory conduct, Krance offers the following on page 38 of her report found in Exhibit D (Appendix page 29). *In re Hehn*, 2008 ND 36, ¶ 19, 745 N.W.2d 631:

Mr. Mangelsen’s Antisocial Personality Disorder has manifested in some extreme ways, including his past sexually predatory conduct. It is concluded that a nexus exists linking the Antisocial Personality Disorder to Mr. Mangelsen’s sexual offending in that his pattern of sexually predatory conduct is characterized by predatory and opportunistic offending, impulsivity, deceitfulness, aggression and a lack of remorse for his victims. It is widely accepted that the best predictor of future behavior is past behavior. Moreover, this disorder predisposes him to act impulsively and to disregard the wishes, rights, and safety of others in order to achieve his own ends. Therefore, this disorder predisposes him to engage in future acts of sexually predatory conduct.

[¶ 13] Compare this “nexus” with the nexus Krance found in regards to Glenn Halton on page 13 of Exhibit A (Appendix page 25):

Mr. Halton's Antisocial Personality Disorder with Narcissistic Features has manifested in some extreme ways, including his past sexually predatory conduct. It is widely accepted that the best predictor of future behavior is past behavior. Moreover, this disorder predisposes him to act impulsively and to disregard the wishes, rights, and safety of others in order to achieve his own ends. Therefore, this disorder predisposes him to engage in future acts of sexually predatory conduct. Additionally, this disorder adversely affects Mr. Halton's ability to modulate the fantasies, urges, and behavior related to the sexual disorder.

[¶ 14] Compare the above two professional conclusions with the nexus Krance found in regards to Jeremy Johnson on pages 15-16 of Exhibit B (Appendix page 26):

Mr. Johnson's personality disorder has manifested in some extreme ways, including his past sexually predatory conduct. It is concluded that a nexus exists linking the Antisocial Personality Disorder to Mr. Johnson's sexual offending in that his pattern of sexually predatory conduct is characterized by opportunistic offending, impulsivity, deceitfulness, aggression, and a

lack of remorse for his victims. It is widely accepted that the best predictor of future behavior is past behavior. Moreover, this disorder predisposes him to act impulsively and to disregard the wishes, rights, and safety of others in order to achieve his own ends. Therefore, this disorder in combination with his history of sexual offending predisposes him to engage in future acts of sexually predatory conduct. Additionally, this disorder adversely affects Mr. Johnson's ability to modulate the fantasies, urges, and behavior related to the sexual disorder.

[¶ 15] Compare the above three professional conclusions with the nexus Krance found in regards to James Brown on page 14 of Exhibit C (Appendix page 28):

Mr. Brown's Antisocial Personality Disorder with Narcissistic and Borderline features has manifested in some extreme ways, including his past sexually predatory conduct. It is concluded that a nexus exists linking the Antisocial Personality Disorder with Narcissistic and Borderline features has manifested in some extreme ways, including his past sexually predatory conduct. It is concluded that a nexus exists linking the Antisocial Personality Disorder to Mr. Brown's sexual offending in that his pattern of sexually predatory conduct is characterized by predatory offending, impulsivity, deceitfulness, aggression, and a lack of remorse for his victims. It is widely accepted that the best predictor of future behavior is past behavior. Moreover, this disorder predisposes him to act impulsively and to disregard the wishes, rights, and safety of others in order to achieve his own ends. Therefore, this disorder predisposes him to engage in future acts of sexually predatory conduct. Additionally, this disorder adversely affects MR. Brown's ability to modulate the fantasies, urges, and behavior related to the sexual disorder.

[¶ 16] Compare the above four professional conclusions with the nexus Krance found in regards to James McLeod on page 10 of Exhibit E (Appendix page 31):

Mr. McLeod's personality disorder has manifested in some extreme ways, including his past sexually predatory conduct. It is concluded that a nexus exists linking the Antisocial Personality Disorder to Mr. McLeod's sexually offending in that this pattern of sexually predatory conduct is characterized by opportunistic offending, impulsivity, deceitfulness, aggression, and a lack of remorse for his victims. It is widely accepted that the best predictor of future behavior is past behavior. Moreover, this disorder predisposes him to act impulsively and to disregard the wishes, rights, and safety of others in order to achieve his own ends. Therefore,

this disorder in combination with his history of sexual offending predisposes him to engage in future acts of sexually predatory conduct.

[¶ 17] Compare the above five professional conclusions with the nexus Krance found in regards to Joshua Gomez on page 28 of Exhibit F (Appendix page 32):

Mr. Gomez's personality disorder has manifested in some extreme ways, including his past sexually predatory conduct. It is concluded that a nexus exists linking the Antisocial Personality Disorder to Mr. Gomez's sexual offending in that his pattern of sexually predatory conduct is characterized by opportunistic offending, impulsivity, deceitfulness, aggression, and a lack of remorse for his victims. It is widely accepted that the best predictor of future behavior is past behavior. Moreover, this disorder predisposes him to act impulsively and to disregard the wishes, rights, and safety of others in order to achieve his own ends. Therefore, this disorder in combination with his history of sexual offending predisposes him to engage in future acts of sexually predatory conduct.

[¶ 18] Compare the above six professional conclusions with the nexus Dr. Lynne Sullivan found in regards to Kevin Fox on page 11 of Exhibit G (Appendix page 33):

Mr. Fox's Antisocial Personality Disorder has manifested in some extreme ways, including his past sexually predatory conduct. It is concluded that a nexus exists linking the Antisocial Personality Disorder to Mr. Fox's sexual offending in that his pattern of sexually predatory conduct is characterized by predatory offending, impulsivity, deceitfulness, aggression, and a lack of remorse for his victims. It is widely accepted that the best predictor of future behavior is past behavior. Moreover, this disorder predisposes him to act impulsively and to disregard the wishes, rights, and safety of others in order to achieve his own ends. Therefore, this disorder predisposes him to engage in future acts of sexually predatory conduct. Additionally, this disorder adversely affects Mr. Fox's ability to modulate the fantasies, urges, and behavior related to the sexual disorder.

[¶ 19] Compare the above seven professional conclusions with the nexus Dr. Lynne Sullivan found in regards to Kevin Fox on page 13 of Exhibit H (Appendix page 34):

Mr. Fox's Antisocial Personality Disorder has manifested in some extreme ways, including his past sexually predatory conduct. It is concluded that a

nexus exists linking the Antisocial Personality Disorder to Mr. Fox's sexual offending in that his pattern of sexually predatory conduct is characterized by opportunistic and predatory offending, impulsivity, deceitfulness, and a lack of remorse for his actions or empathy for his victims. It is widely accepted that the best predictor of future behavior is past behavior. Moreover, this disorder predisposes him to act impulsively and to disregard the wishes, rights, and safety of others in order to achieve his own ends. Therefore, this disorder predisposes him to engage in future acts of sexually predatory conduct. Additionally, this disorder adversely affects Mr. Fox's ability to modulate the fantasies, urges, and behavior related to the sexual disorder.

[¶ 20] Compare the above eight professional conclusions with the nexus Dr. Lynne Sullivan found in regards to Kevin Fox on page 10 of Exhibit I (Appendix page 35):

Mr. Fox's Antisocial Personality Disorder has manifested in some extreme ways, including hi past sexually predatory conduct, and his poor progress in treatment (i.e., he believes he has no significant problems that require treatment, only maintenance). It is concluded that a nexus exists linking the Antisocial Personality Disorder to Mr. Fox's sexual offending in that his pattern of sexually predatory conduct is characterized by opportunistic and predatory offending, impulsivity, deceitfulness, and a lack of remorse for his actions or empathy for his victims. It is widely accepted that the best predictor of future behavior is past behavior. Moreover, this disorder predisposes him to act impulsively and to disregard the wishes, rights, and safety of others in order to achieve his own ends. For these reasons, this disorder predisposes him to engage in future acts of sexually predatory conduct. Additionally, this disorder adversely affects Mr. Fox's ability to modulate the fantasies, urges, and behavior related to the sexual disorder.

[¶ 21] Compare the above nine professional conclusions with the nexus Dr. Lynne Sullivan found in regards to Kevin Fox on page 13 of Exhibit J (Appendix page 36):

Mr. Fox's Antisocial Personality Disorder has manifested in some extreme ways, including his past sexually predatory conduct, and his poor progress in treatment (i.e., he believes he has no significant problems that require treatment, only maintenance). It is concluded that a nexus exists linking the Antisocial Personality Disorder to Mr. Fox's sexual offending in that his pattern of sexually predatory conduct is characterized by opportunistic and predatory offending, impulsivity, deceitfulness, and a lack of remorse for his actions or empathy for her victims. It is widely accepted that the best predictor of future behavior is past behavior. Moreover, this disorder

predisposes him to act impulsively and to disregard the wishes, rights, and safety of others in order to achieve his own ends. For these reasons, this disorder predisposes him to engage in future acts of sexually predatory conduct. Additionally, this disorder adversely affects Mr. Fox's ability to modulate the fantasies, urges, and behavior related to the sexual disorder.

[¶ 22] Compare the above ten professional conclusions with the nexus Dr. Lynne Sullivan found in regards to Leroy Hanson on page 14 of Exhibit K (Appendix page 37):

Mr. Hanson's Antisocial Personality Disorder has manifested in some extreme ways, including his past sexually predatory conduct. It is concluded that a nexus exists linking the Antisocial Personality Disorder to Mr. Hanson's sexual offending in that his pattern of sexually predatory conduct is characterized by opportunistic and predatory offending, impulsivity, deceitfulness, and a lack of remorse for his actions or empathy for his victims. It is widely accepted that the best predictor of future behavior is past behavior. Moreover, this disorder predisposes him to act impulsively and to disregard the wishes, rights, and safety of others in order to achieve his own ends. Therefore, this disorder predisposes him to engage in future acts of sexually predatory conduct. Additionally, this disorder adversely affects Mr. Hanson's ability to modulate the fantasies, urges, and behavior related to his paraphilia.

[¶ 23] Compare the above eleven professional conclusions with the nexus Dr. Robert Lisota found in regards to Sandy Mangelsen on page 6 of Exhibit L (Appendix page 38):

Mr. Mangelsen's personality disorder has manifested in some extreme ways, including his past sexually predatory conduct. It is concluded that a nexus exists linking the Antisocial Personality Disorder to Mr. Mangelsen's sexual offending in that his pattern of sexually predatory conduct is characterized by opportunistic offending, impulsivity, deceitfulness, aggression and a lack of remorse for his victims. It is widely accepted that the best predictor of future behavior is past behavior. Moreover, this disorder predisposes him to act impulsively and to disregard the wishes, rights, and safety of others in order to achieve his own ends. Therefore, this disorder in combination with his history of sexual offending predisposes him to engage in future acts of sexually predatory conduct.

[¶ 24] The above copy-and-paste practice of the State of North Dakota in curtailing the civil liberties of individuals becomes even more frightening when viewed along with the facts that Krance has found individuals to meet the criteria as a sexually dangerous individual in 97% of the evaluations she has done (Transcript page 83; lines 21-25), she has had no direct contact with Mangelsen other than to ask him if he wishes to interview in the last four years (Transcript page 86; lines 16-21), other than a cooperative kiss Mangelsen has had no skin to skin contact with any victims (Transcript page 90; lines 17-20), the antisocial personality disorder which has “manifested in some extreme ways” can be found in approximately 50 to 80 percent of a prison population (Transcript page 99; Lines 1-5), and that there is a minimum of 210 different ways to meet the criteria for antisocial personality disorder (Transcript page 145: Lines 3-6).

CONCLUSION

[¶ 25] Under N.D.C.C. section 25-03.3, at a review hearing the State bears the burden of showing, by clear and convincing evidence, that Mangelsen is a sexually dangerous individual subject to continued civil commitment. This requires a present-day determination of sexual dangerous.

[¶ 26] In support of the position that this burden is met, the State of North Dakota has now simply resorted to pressing “CTRL+F” on a keyboard and changing the name of the individual in the report. By no objective standard is this clear and convincing evidence. The State of North Dakota contends that regardless of an individual’s offending history, current age, diagnoses, scores on actuarials, and current behaviors, the manifestation happened in some extreme ways.

[¶ 27] Mangelsen offers a different argument. That is that the doctors at the North Dakota State Hospital have an incentive to find a personality disorder (note that Ertelt did not find a personality disorder), and once found, the “skids are greased” in that the template is now complete. In other words, once they offer that a personality disorder exists, all the language they have used in past reports is now usable in this report. Without it, they would have to come up with an original evaluation to indefinitely commit someone. Mangelsen asks this Court to find that at the very least, if the State of North Dakota is going to keep this process going, that the State be required to have an original evaluation.

[¶ 28] Mangelsen respectfully requests this Court reverse the decision of the District Court, and grant Mangelsen his immediate release.

Respectfully submitted this 16th day of May, 2016.

/s/

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STATE OF NORTH DAKOTA

CERTIFICATE OF SERVICE

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STATE OF NORTH DAKOTA)
)SS
COUNTY OF GRAND FORKS)

The undersigned, being of legal age, being first duly sworn deposes and says that on the
16th day of May, 2016, he served a true and correct copy of the following document(s):

- 1. Brief of Appellant (.doc & .pdf)**
- 2. Appendix of Appellant (.pdf)**

Electronically via email to:

Meredith Larson, Grand Forks County Assistant State's Attorney, sasupportstaff@gfcounty.org



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