

IN THE SUPREME COURT  
FOR THE STATE OF NORTH DAKOTA

In the Interest of Danny Nelson	)	
	)	
Lonnie Olson, State's Attorney, Petitioner and Appellee,	)	Supreme Court No.: 20160113
	)	District Court No.: 36-2014-MH-00023
	)	
v.	)	
	)	
Danny Robert Nelson, Respondent and Appellant.	)	
	)	

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APPEAL FROM THE DISTRICT COURT ORDERING CIVIL COMMITMENT  
DATED MARCH 8, 2016, HELD BEFORE THE HONORABLE DONOVAN  
FOUGHTY IN RAMSEY COUNTY, NORTH DAKOTA

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SUPPLEMENTAL BRIEF OF THE APPELLEE

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## SUPPLEMENTAL BRIEF

[¶1] Danny Nelson (hereinafter Nelson) is a sexually dangerous individual that warrants civil commitment to the North Dakota State Hospital. North Dakota Century Code § 25-03-3 contains a three (3) prong test, which the State must satisfy in order to commit someone to the State Hospital as a sexually dangerous individual. The three (3) prongs are: (1) the individual has engaged in sexually predatory conduct; (2) the individual has a congenital or acquired condition that is manifested by a sexual disorder, or other mental disorder or dysfunction; and (3) the disorder makes the individual likely to engage in further acts of sexually predatory conduct. Interest of D.W., 2016 ND 156, ¶ 7; see also Interest of Corman, 2014 ND 88, ¶ 8, 845 N.W.2d 335. Additionally, “To satisfy substantive due process, the State must also prove the committed individual has serious difficulty controlling his behavior...We construe the definition of a sexually dangerous individual to mean that proof of a nexus between the requisite disorder and dangerousness encompasses proof that the disorder involves serious difficulty in controlling behavior and suffices to distinguish a dangerous sexual offender whose disorder subjects him to civil commitment from the dangerous but typical recidivist in the ordinary criminal case. Matter of Wolff, 2011 ND 76, ¶ 7, 796 N.W.2d 644. A connection between an individual’s disorder and the individual’s inability to control his or her actions must be demonstrated. An individual’s conduct that demonstrates inability to control behavior need not be sexual in nature. Wolff, 2011 ND 76, ¶7, 796 N.W.2d 644.

The State has met this test by clear and convincing evidence. The district court’s Order should be affirmed.

[¶2] The first statutory element is undisputed. The district court found Nelson had engaged in sexually predatory conduct based upon his 2009 conviction for continuous sexual abuse of a child. The second statutory element was satisfied by the district court finding Nelson had been diagnosed with “Unspecified Paraphilic Disorder, Substance Abuse Disorder, Other Specified Personality Disorder (Narcissistic and Antisocial Personality Traits).” The district court made supplemental findings addressing the third element. The district court found by clear and convincing evidence that Nelson is likely to engage in further and future acts of sexually predatory conduct and his conduct cannot be controlled. The district court found Nelson’s diagnosis of Unspecified Paraphilic Disorder has predisposed him to engaging in sexual contact with prepubescent and pubescent females, as well as unlawfully entering the homes of women, stealing items to be used for sexual gratification. The district court further found Nelson’s Substance Abuse disorder aggravated the possibility of future sexually predatory conduct. Finally, the district court noted the nexus between the Order Specified Personality Disorder, Antisocial and Narcissistic features to Nelson’s sexual offending; noting specifically his pattern of sexually predatory conduct is characterized by opportunistic offending, impulsivity, deceitfulness, aggression and lack of remorse for his victims.

[¶3] At the Commitment Hearing, the State called Dr. Krance as an expert witness to testify as to Nelson’s mental health and to recommend him for commitment to the State Hospital as a sexually dangerous individual. After reviewing Nelson’s medical history and conducting her evaluation, Dr. Krance diagnosed Nelson with Unspecified Paraphilic Disorder, Other Specified Personality Disorder, Antisocial Personality and Narcissistic Traits and Alcohol Use Disorder, not Hebephilia. TH 21-22. During cross examination

at the treatment hearing, Dr. Krance clarified the penitentiary had diagnosed Paraphilia Not Otherwise Specified, with Fetish and Hebephilia, not Dr. Krance. TH 40.

[¶4] While testifying, Dr. Krance indicated concern over what she termed “numerous inconsistencies” from the records as well as her interview with Nelson. TH 11-12, 14-20. Dr. Krance testified to concern regarding Nelson’s record of completing treatment at the penitentiary and the interview of Nelson with minimizing, and justification for past criminal conduct. TH 11. Dr. Krance further testified of concern regarding Nelson’s record of prior statements and then the interview of Nelson denying prior statements. TH 12. Dr. Krance testified to a concern of Nelson completing an intensive sex offender program in the penitentiary and yet still presenting during an interview with her to look at his offenses through a justification lens of mutuality and no use of force. TH 14-15. Dr. Krance indicated during the interview with Nelson he indicated the age of the index offense victim was 11. TH 15. In the intensive sex offender treatment program at the penitentiary reports indicated Nelson reported the index offense victim was age 9. TH 16. Finally Dr. Krance indicated concerns with Nelson as someone who completed an intensive sex offender program at the penitentiary but showed a concerning level of understanding of his offense cycle as well as a solid relapse prevention plan. TH 17-19. These concerns were then relied upon by the Judge in his decision to commit Nelson.

### **CONCLUSION**

[¶5] The district court found by clear and convincing evidence that Nelson was a sexually dangerous individual as required under N.D.C.C. §25-03-3. The district court further found the testimony of Dr. Krance to be more persuasive than the expert testimony presented on behalf of Nelson. The district court properly found Nelson is

likely to engage in further acts of sexually predatory conduct and his conduct cannot be controlled. The State requests this Court affirm the district court.

Respectively submitted on May 12, 2017.

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**CERTIFICATE OF SERVICE**

I, **Kari M. Agotness**, do hereby certify that on May 12, 2017, I served the following document:

**Supplemental Brief of Appellee**

in Microsoft Word format upon the following:

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All done by Electronic Filing pursuant to N.D.R.App.P. 25.

Dated this 12<sup>th</sup> day of May, 2017

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