

**IN THE SUPREME COURT**

**STATE OF NORTH DAKOTA**

**In the Interest of William Carter**

	)	
<b>State of North Dakota</b>	)	<b>Supreme Court No.</b>
<b>Petitioner &amp; Appellee</b>	)	<b>20160236</b>
	)	
<b>v.</b>	)	<b>Stutsman County No.</b>
	)	<b>47-03-K-00872</b>
<b>William Carter</b>	)	<b>06-R-0029D</b>
<b>Respondent &amp; Appellant</b>	)	

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**APPELLEE'S BRIEF**

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**Appeal from the Order Denying Application for Discharge  
Entered by the District Court on May 26, 2016,  
Issued in Stutsman County District Court  
by the Honorable John E. Greenwood  
Judge of the Southeast District Court**

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**[¶1] TABLE OF CONTENTS**

	<b>PARAGRAPH</b>
TABLE OF AUTHORITIES .....	2
STATEMENT OF ISSUES .....	3
JURISDICTIONAL STATEMENT .....	5
STANDARD OF REVIEW .....	7
STATEMENT OF THE CASE .....	9
STATEMENT OF THE FACTS .....	11
LAW AND ARGUMENT .....	13
I.    The Petitioner has proven, and the District Court did not err in finding, by clear and convincing evidence that William Carter remains a sexually dangerous individual and is likely to engage in further acts of sexually predatory conduct .....	23
II.   The Petitioner has proven, and the District Court did not err in finding, that William Carter has serious difficulty controlling his behavior .....	31
CONCLUSION .....	35

**[¶2] TABLE OF AUTHORITIES**

<b>CASES</b>	<b>PARAGRAPH</b>
<u>In the Interest of D.V.A.</u> , 2004 ND 57, 676 N.W.2d 776 .....	8
<u>In re G.R.H.</u> , 2006 ND 56, 711 N.W.2d 587 .....	15, 24, 32
<u>In the Interest of M.B.K.</u> , 2002 ND 25, 639 N.W.2d 473 .....	8
<u>In the Interest of M.D.</u> , 1999 ND 160, 598 N.W.2d 799 .....	8
<u>In re JM.</u> , 2006 ND 96, 713 N.W.2d 518 .....	16
<u>Kansas v. Crane.</u> , 534 U.S. 407, 413 (2002) .....	32
<u>Matter of Hehn.</u> , 2008 ND 36, 745 N.W.2d 631 .....	32
<b>STATUTES</b>	<b>PARAGRAPH</b>
N.D. Const. art. VI, § 2 .....	6
N.D. Const. art. VI, § 6 .....	6
N.D. Const. art. VI, § 8 .....	6
N.D.C.C. § 25–03.3–01(8) .....	14
N.D.C.C. § 25–03.3–01(9)(a)(4) .....	16
N.D.C.C. § 25–03.3–01(9)(a)(7) .....	16
N.D.C.C. § 25–03.3–02 .....	6
N.D.C.C. § 25–03.3–19 .....	6

**OTHER AUTHORITY**

**PARAGRAPH**

Hearing on H.B. 1047 Before the House Judiciary Comm.,  
55th N.D. Legis. Sess. (Jan. 14, 1997) . . . . . 24

### **[¶3] STATEMENT OF ISSUES**

- [¶4] I. The Petitioner has proven, and the District Court did not err in finding, by clear and convincing evidence that William Carter remains a sexually dangerous individual and is likely to engage in further acts of sexually predatory conduct.
- II. The Petitioner has proven, and the District Court did not err in finding, by clear and convincing evidence that William Carter has serious difficulty controlling his behavior.

### **[¶5] JURISDICTIONAL STATEMENT**

[¶6] The district court had jurisdiction under N.D. Const. art. VI, § 8 and N.D.C.C. § 25–03.3–02. Carter’s appeal is timely under N.D.C.C. § 25–03.3–19. This Court has jurisdiction under N.D. Const. art. VI, §§ 2 and 6, and N.D.C.C. § 25–03.3–19.

### **[¶7] STANDARD OF REVIEW**

[¶8] The North Dakota Supreme Court applies “a modified clearly erroneous” standard of review to commitments of sexually dangerous individuals under N.D.C.C. ch. 25–03.3. In the Interest of D.V.A., 2004 ND 57, ¶ 7, 676 N.W.2d 776; In the Interest of M.B.K., 2002 ND 25, ¶ 9, 639 N.W.2d 473; In the Interest of M.D., 1999 ND 160, ¶ 34, 598 N.W.2d 799. This Court has found that it will affirm a district court’s commitment order unless the order is induced by an erroneous view of the law, or [the Court is] firmly convinced the order is not

supported by clear and convincing evidence. D.V.A., at ¶ 7; M.B.K., at ¶ 9; M.D., at ¶ 34.

### **[¶9] STATEMENT OF THE CASE**

[¶10] The Petitioner concurs with the statement of the case provided in Carter's brief, dated September 12, 2016.

### **[¶11] STATEMENT OF THE FACTS**

[¶12] The Petitioner concurs with the statement of the facts provided in Carter's brief, dated September 12, 2016.

### **[¶13] LAW AND ARGUMENT**

[¶14] Chapter 25–03.3, N.D.C.C., authorizes the involuntary civil commitment of a sexually dangerous individual, which is defined in N.D.C.C. § 25–03.3–01(8) to mean:

[A]n individual who is shown to have engaged in sexually predatory conduct and 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 which constitute a danger to the physical or mental health or safety of others.

[¶15] That definition requires three elements before a person may be involuntarily committed as a sexually dangerous individual: (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, a personality disorder,

or other mental disorder or dysfunction; and (3) the disorder makes the individual likely to engage in further acts of sexually predatory conduct which constitute a danger to the physical or mental health or safety of others. In re G.R.H., 2006 ND 56 ¶ 6, 711 N.W.2d 587.

[¶16] **The district court found that the first prong had been met.** The district court found that William Carter (herein after referred to as “Carter”) had engaged in a sexually predatory act. (Appellee’s Appendix pp. 15-16). “Sexually predatory conduct” includes engaging in a sexual act or sexual contact with a victim less than fifteen years old, or with a minor victim when the actor is an adult. N.D.C.C. § 25–03.3–01(9)(a)(4) and (7). Carter was convicted of Gross Sexual Imposition, in that he committed a sexual act with a 9-year-old girl. (Id.) He was 17 years old at the time, and was 13 days shy from his 18th birthday. (Id.) He was transferred into adult court prior to his conviction. (App. pp. 9-10).

[¶17] **The district court also found that the second prong had been met.** The district court found that Carter has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction. (Id.) Dr. Krance testified that Carter has a diagnosis of pedophilic disorder, sexually attracted to females, non-exclusive type, and anti-social personality disorder. (Hearing Transcript, page 13, lines 6-15). Dr. Benson

conversely testified that Carter has a diagnosis of pedophilic disorder, non-exclusive, not limited to incest, and anti-social personality disorder. (Tr. pp. 77-78, ll 20-25, 1-2). The factors that Dr. Krance took into account, when reaching her diagnosis of the pedophilic disorder was Carter's index offense, as well as Carter's behaviors when he was in prison and since his placement at the North Dakota State Hospital. (Tr. pp. 13-14, ll 22-25, 1-7). Dr. Krance also found that Carter has an intense persistent sexual interest in prepubescent children and has engaged in fantasies and the behaviors that go along with these fantasies. (Tr. p.14 ll, 8-13).

[¶18] Dr. Krance also looked at Carter's behavior during the prior review period, where it was found that Carter had masturbated to the image of a nine-year-old female that was in a picture in March of 2015. (Tr. pp.14-15, ll 14-25, 1). Carter indicated a sexual attraction to females between the ages of 9 and 13 and at another point he indicated an age range of 9 to 18. (Tr. p.15, ll 2-11). Carter also reported engaging in channel surfing in that he watched the Disney Channel and Nickelodeon, channels that are geared for younger children. (Tr. pp.15-17, ll 17-25, 1-25, 1-2). He said he did this because of frustration and going "into [his] old patterns of just channel surfing, doing whatever [he] wanted and then he stopped talking about things that were bothering [him]." (Tr. pp.15-17, ll



17-25, 1-25, 1-2). In Carter's interview with Dr. Krance, Carter told Dr. Krance that he can manage his impulses, saying it was just like a light switch, referring to the day of his index offense when he stopped trying to control his impulse with the 9-year-old victim to perform oral sex on him. (Tr. p.17, ll 3-21). Dr. Krance also took into account Carter acknowledging that, during December of 2015, he became aroused when another individual was presenting one of their autobiographical offense histories in a group setting at the State Hospital. (Id.)

[¶19] The district court also found that Carter has an antisocial personality disorder. (App. p.16). A diagnosis of antisocial personality disorder does not, per se, establish a nexus between the requisite disorder and future dangerousness. In re JM, 2006 ND 96 ¶ 10, 713 N.W.2d 518. The evidence must clearly show the antisocial personality disorder is likely to manifest itself in a serious difficulty in controlling sexually predatory behavior. Id. The latter factor of difficulty controlling behavior will be addressed in section II of this brief.

[¶20] In regards to the diagnosis of antisocial personality disorder, Dr. Krance testified that she took into consideration the indications of Carter not following unit rules. (Tr. pp 18-19, ll 6-25, 1-5). He had a behavior write-up back in January of 2015 for a property violation. (Tr. pp 18-19, ll 6-25, 1-5). He also had a write-up in November of 2014 for possession of contraband and a property

violation as well as going against the rules and ordering a television. (Tr. pp 18-19, ll 6-25, 1-5). Dr. Krance also spoke of evidence of manipulation and deceitfulness over the review period. During the interview, Carter talked about predatory behaviors he engaged in with female staff, such as purposefully having them reach down to grab things so that he can view their cleavage. (Tr. p.19, ll 6-17).

[¶21] In this case, it was shown that Carter was engaging in behaviors that are counter-therapeutic to his treatment while in a secured setting. (Tr. pp.19-20, ll 18-25, 1-9). Dr. Krance testified that Carter needs to be using the skills he's learning in treatment on a consistent basis. (Id.) Dr. Krance's opinion was that Carter shows irresponsibility in his treatment by his choosing to engage in high risk behaviors such as channel surfing programs geared toward younger children and masturbating to the image of a 9-year-old. (Id.)

[¶22] **The district court found that the third prong had been met.** The district court found that Carter was likely to engage in further acts of sexually predatory conduct. Carter contests whether the State has met its burden on this third prong by clear and convincing evidence.

[¶23] **I. The Petitioner has proven, and the District Court did not err in finding, by clear and convincing evidence that William Carter remains a**

**sexually dangerous individual and is likely to engage in further acts of sexually predatory conduct.**

[¶24] The North Dakota Supreme Court has found that the language of N.D.C.C. 25–03.3 requires a causal relationship or nexus between an individual’s disorder and dangerousness, because the individual “must be diagnosed with a mental disorder which can be tied by expert testimony to the individual’s inability to control his or her behavior and which would, therefore, likely result in further sexually predatory conduct. In re G.R.H. at ¶ 17 (citing Hearing on H.B. 1047 Before the House Judiciary Comm., 55th N.D. Legis. Sess. (Jan. 14, 1997) (section-by-section prepared by Office of Attorney General). Dr. Krance testified that, in her opinion, there is a likelihood that Carter would engage in further acts of sexual predatory conduct. (Tr. p.20, ll 13-20). She based this opinion on a number of factors. First, was a review of the Static-99R. Dr. Krance indicated that, upon review of Carter’s history and other factors, she changed Carter’s score from a 4 to a 6; the score of 6 equating to high risk. (Tr. pp.20-21, ll 21-25, 1-2). According to Dr. Krance, when someone has a score of 6, the risk of recidivism is 37.3 percent over a ten-year period. (Tr. p.22, ll 17-25). Dr. Benson gave Carter a score of 5 on the Static-99R, which equates to a moderate high risk. (Tr. p.83, ll 16-25).

[¶25] Dr. Krance testified that she changed the score on the Static-99R for two reasons: (1) learning of an aggressive act that Carter committed while he was in juvenile placement that prompted him being moved from Luther Hall, a less restrictive setting; and (2) noting that Carter engaged in sexual behavior with another male resident in juvenile placement. (Tr. pp.21-22, ll 5-25, 1-9). In particular, Carter attempted to remove the underwear and pants of the other resident while they were asleep. (Id.) The resident then stopped Carter from doing so. (Id.) Dr. Krance testified that she assigned a score of 1 for the sexual behavior because, in her opinion, it was non-consensual. (Tr. p.22, ll 10-16). Dr. Benson also assigned a score of 1 for the transfer from Luther Hall, but did not assign a score for the incident involving the male victim. (Tr. p.80, ll 8-19).

[¶26] The next factor that Dr. Krance took into consideration was the score that Carter received on the PCL-R, or the Psychopathy Checklist Revised. Dr. Lynn Sullivan scored this test back in 2006 and arrived at a score of 31, which is indicative of high psychopathy in an individual. (Tr. p.23, ll 1-11). A score of 31 indicates that Carter is “unusually detached, cold, grandiose, manipulative, willing to lie, and lacking in empathy and remorse,” and such traits “make it highly likely that [Carter] will act in ways that harm others with little or no regard for their feelings or welfare, possibly including in a sexually offensive manner.” (Tr. p.23,

ll 1-11). Dr. Benson gave Carter a Score of 28.2, which she testified indicates that although Carter has more psychopathic characteristics than the general population, he is not a psychopath. (Tr. pp. 79-80, ll 20-25, 1-8).

[¶27] Dr. Krance also factored in her qualitative ratings on the Stable-2007, which she explained was reviewed during every review period because the items on the Stable-2007 could be changeable or things that an individual can work on during treatment in working to lower their risk. (Tr. pp. 23-24, ll 15-25, 1-3). In the review of the Stable-2007, Dr. Krance did find that Carter is at a high risk of sexually offensive behavior over the short term based on the items she had scored. (Tr. p.24, ll 4-8). The items on the Stable-2007 that Dr. Krance found to be problematic were Carter's capacity for relationship stability, lack of concern for others, poor cognitive problem solving, using sex as a coping mechanism, deviant sexual preference, and lack of cooperation with supervision. (Tr. pp. 23-30). Dr. Benson found many of the factors on the Stable-2007 to be problematic, yet indicated that Carter has made significant progress. (Tr. p.85, ll 19-22). However, Dr. Krance found Carter to be at high risk in these areas, noting it to be concerning that Carter was engaging in predatory behaviors toward female staff and engaging in stalking behaviors toward other residents. (Tr. pp.29-30, ll 21-25, 1-6). She testified that, due to Carter engaging in such high-risk behavior in a

treatment setting, she wanted to see Carter using the skills he's learned in treatment more consistently and managing his behavior over a longer period of time. (Tr. pp.29-30, ll 21-25, 1-6)

[¶28] Dr. Benson used two additional instruments to evaluate Carter for this review period. The first was the Structured Risk Assessment Forensic Version, or SRA-FV. Carter was given a rating of High Risk with a score of 3.22. (App. p. 172). Although the rating was High Risk, Dr. Benson noted that only those that scored with a Very High Risk rating are those that should be committed. (Id.) Dr. Krance was familiar with SRA-FV and was trained on it, but didn't use it in her evaluation of Carter because of her opinion that there has not been enough empirical research behind it. (Tr. pp. 37-38, ll 22-25, 1-6).

[¶29] Dr. Benson also used the Structured Assessment of Protective Factors or SAPROF in her evaluation of Carter. Using SAPROF, Dr. Benson formed the opinion that Carter is showing an increase in coping and self-control skills, healthy leisure and an improved attitude toward treatment and authority. (App. pp.172-173). Dr. Krance did not use SAPROF because she was not trained in it, although she did note that it does look at the protective factors that were taken into account with her analysis. (Tr. p.39, ll 3-20).

[¶30] Dr. Krance also took into consideration findings based on her interview

with Carter back in November of 2015. (Tr. pp.31-32, ll 23-25, 1-4). She noted some concerns including Carter struggling with getting defensive when it comes to being confronted and not liking to be challenged. (Tr. p.32, ll 6-10). Dr. Krance also took into account Carter's going into old patterns of behavior such as channel surfing and stalking female staff and other residents when he's having a bad day. (Tr. pp.33-34, ll 18-25, 1-6). She also noted concern to Carter's attitude on his masturbating to an image of a 9-year-old, with Carter believing it to be concerning, but not something that should keep him at the North Dakota State Hospital. (Tr. p.34, ll 7-14).

**[¶31] II. The State has proven, and the District Court did not err in finding, by clear and convincing evidence that William Carter has serious difficulty controlling his behavior.**

[¶32] In addition to the statutory provisions listed in 25-03.3, in order to satisfy substantive due process requirements, the individual must be shown to have serious difficulty controlling his behavior. Matter of Hehn, 2008 ND 36, ¶19, 745 N.W.2d 631 (citing Kansas v. Crane, 534 U.S. 407, 413 (2002)). In Crane, 534 U.S. 407, 413 (2002) the United State's Supreme Court concluded that commitment of a SDI cannot be constitutionally sustained without a determination that the person to be committed has serious difficulty controlling his behavior.

G.R.H., at ¶ 7. There must be a nexus between the disorder and dangerousness, proof of which encompasses evidence showing the individual has serious difficulty controlling his behavior, which suffices to distinguish a SDI from other dangerous persons. (Id.) Dr. Krance found that Carter has serious difficulty in controlling his behavior while in supervision within the treatment facility based on Carter continuing to engage in predatory-type behaviors with female staff, stalking other residents, and engaging in other high risk behaviors such as masturbating to the image of the 9-year-old while in the presence of Carter's roommate and channel-surfing for the purpose of seeking child-oriented programming. (Tr. pp. 35-37).

[¶33] Ultimately, Dr. Krance concluded that Carter would have serious difficulty in continuing to utilize the skills he's learned in treatment on a consistent basis when he continues to engage in high risk behaviors while in a treatment setting.

[¶34] There was agreement between the two experts that Carter had engaged in sexually predatory conduct. There was also agreement that Carter had a sexual disorder as well as an anti-social personality disorder. Dr. Benson concluded that Carter no longer meets the criteria of a sexually dangerous individual. Dr. Krance concluded, and the district court agreed, that Carter continues to meet the criteria



for a sexually dangerous individual. Based on the testimony given at the discharge hearing, as well as the other supporting documents in the appendix, the Petitioner's position is that it has met its burden by clear and convincing evidence and the district court did not err in their findings.

**[¶35] CONCLUSION**

[¶36] For the foregoing reasons, plaintiff and appellee the State of North Dakota respectfully requests that the district court's order denying Carter's application for discharge be affirmed.

RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of October, 2016.

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF STUTSMAN

SOUTHEAST JUDICIAL DISTRICT

IN THE INTEREST OF WILLIAM CARTER

STATE OF NORTH DAKOTA

) **Supreme Court No. 20160236**

Petitioner/Appellee

) **Stutsman Cty No. 47-03-K-00872**

)

)

v.

)

**CERTIFICATE OF SERVICE**

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William Carter,

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Respondent/Appellant

)

1. On October 21<sup>st</sup>, 2016, a copy of the document “Appellee’s Brief: Appeal from the Order Denying Application for Discharge Entered by the District Court on May 26, 2016, Issued in Stutsman County” was e-served on the following individuals:

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