

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

In the Interests of Aaron Kulink)	
)	
State of North Dakota,)	
)	
Petitioner and Appellee,)	
)	
vs.)	Supreme Ct. No. 201800833
)	Dist. Ct. No. 09-07-R-237
Aaron Kulink,)	
)	
Respondent-Appellant.)	

APPELLEE’S BRIEF

Appeal from the Findings of Fact, Conclusions of Law, and Order Denying
Discharge issued February 16, 2018, by the Honorable Susan L. Bailey,
Cass County District Court, East Central Judicial District

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[¶ 2] **TABLE OF AUTHORITIES**

Paragraph No.

State Cases:

Interests of Johnson, 2016 ND 29, 876 N.W.2d 25 ¶ 20

¶ 3] JURISDICTIONAL STATEMENT

¶ 4] The State agrees with the Respondent's Jurisdictional Statement.

¶ 5] STATEMENT OF ISSUE

¶ 6] Whether the Respondent remains a Sexually Dangerous Individual, requiring continued civil commitment.

¶ 7] STATEMENT OF CASE

¶ 8] The State agrees with the Respondent's Statement of the Case.

¶ 9] STATEMENT OF FACTS

¶ 10] The State agrees with the Respondent's Statement of Facts.

¶ 11] STANDARD OF REVIEW

¶ 12] The State agrees with the Respondent's Standard of Review which is laid out in ¶10 of Respondent's brief.

[¶ 13] **LAW AND ARGUMENT**

[¶ 14] The Respondent remains a Sexually Dangerous Individual, requiring continued civil commitment.

[¶ 15] In this case the district court found that the parties stipulated that the Respondent 1.) engaged in sexually predatory conduct, and 2.) is diagnosed with a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction. (T. at 7 & 8).

[¶ 16] The district court found testimony by Dr. Krance more compelling than that of Dr. Volk in regards to the 3rd prong, whether the Respondent is likely to engage in further acts of sexually predatory conduct. The district court noted that although the Respondent had shown improvement during the review period, he still exhibited risk factors.

[¶ 17] Finally, the district court found that the Respondent has serious difficulty controlling behavior. The district court cites the fact that in March of 2017, the Respondent was in possession of pornography and homemade sex toys, as evidence of the serious difficulty requirement. (A. at 8). This issue was addressed by both Dr. Krance and Dr. Volk. Dr. Krance testified that this event occurred during a period of high stress for the Respondent and was a violation of the community placement rules. (T. at 16 & 17). The Respondent did this in spite of the fact that it was a violation and something for which he could receive a consequence. The Petitioner submits that this demonstrates a serious difficulty in controlling one's behavior.

[¶ 18] Dr. Volk testified that viewing pornography and having a dildo were concerning as well. (T. at 76). He also testified that it would be beneficial for the Respondent to complete sex offender specific treatment. (T. at 81). Dr. Volk did not address the issue of whether the Respondent has serious difficulty controlling behavior because Dr. Volk determined that the Respondent did not meet the prong that he is likely to engage in further acts of sexually predatory conduct. (T. at 77 & 78).

[¶ 19] The Respondent did not offer any testimony regarding whether the Respondent has serious difficulty controlling his behavior; therefore, the district court could only rely on the information submitted by the Petitioner. Dr. Krance testified that the Respondent was likely to engage in further acts of sexually predatory conduct and that he has serious difficulty controlling behavior. Dr. Krance testified that the possession of pornography, a homemade dildo, and pre-occupation with sex during an identified period of stress showed a nexus between requisite disorder and serious difficulty controlling behavior. (T. at 2). Dr. Volk acknowledged this was concerning as was the fact that the Respondent has not yet shown any long term stability on an independent basis at the time of the review. (T. at 76, 78 & 79).

[¶ 20] This Court defers to the district court's determination when the determination is supported by specific findings. Interest of Johnson, 2016 ND 29, 876 N.W.2d 25, 27-28. In this instance, the district court determined Dr. Krance's testimony was more compelling and stated its finding in the court's order dated

February 15, 2018. (A. at 7 – 9). Ultimately, both psychologists determined the Respondent would benefit from additional treatment. (T. at 28 & 80 – 83).

[¶ 21] CONCLUSION

[¶ 22] Based on the forgoing reasons the State submits that the Respondent's request for relief should be denied.

[¶ 23] Respectfully submitted this 1st day of August, 2018.

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[¶ 24] CERTIFICATE OF SERVICE

[¶ 25] A true and correct copy of the foregoing document was sent by e-mail on the 1st day of August, 2018, to Tyler J. Morrow at tyler@kpmwlaw.com.

Leah J. Viste