

**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**

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Brief on the Sufficiency of Amended Findings of Fact, Conclusions of Law, and  
Order Denying Discharge issued December 7, 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:**

State v. Johnson, 2016 ND 29, 876 N.W.2d 25 .....¶ 3

[¶ 3] This Court has requested briefs on the sufficiency of the Amended Findings of Fact, Conclusions of Law, and Order Denying Discharge dated December 7, 2018. This Court requires the district court's order to provide a sufficient evidentiary and theoretical basis for its decision. State v. Johnson, 2016 ND 29 at ¶4, 876 N.W.2d 25, 27 (2016). This Court determined that the district courts initial order dated February 16, 2018, was insufficient.

[¶ 4] In the amended order the district court specifically supports its legal conclusions with testimony and evidence that was provided at the hearing. The parties stipulated that Respondent engaged in sexually predatory conduct and the he is diagnosed with a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction. Testimony was given and written evaluations submitted regarding the third prong, whether Respondent is likely to engage in further acts of sexually predatory conduct, and the substantive due process requirement that Respondent has serious difficulty controlling his behavior.

[¶ 5] In the initial order the district court's found that Respondent was likely to engage in further acts of sexually predatory conduct, and cited as a basis for this conclusion the professional opinion of Dr. Jennifer Krance. "Dr. Krance testified that, although the Respondent has shown improvement, the Respondent still exhibits risk factors during this review period." Appendix at 8. That concluded the district's written basis for its finding on the third prong. The district court cited Respondent's

possession of pornography and a homemade sex toy as evidence for its finding that Respondent has serious difficulty controlling his behavior. Appendix at 8.

[¶ 6] In the amended order the district court lays out very specific reasons for its findings. The district court addresses both the static and dynamic risk factors that play in to Respondent's likelihood of reoffending and his serious difficulty in controlling his behavior. Amended Findings of Fact, Conclusions of Law, and Order Denying Discharge (hereinafter "Amended Order") at ¶5 & ¶6. The district court also addresses the fact that Respondent himself identified stressors and behavior that are indicators of possible risk of re-offending. Amended Order at ¶6. These factors were present during the review period. The district court further notes that Respondent has not shown an ability to modify or control behavior that had been identified as problematic. Amended Order at ¶8. The amended order provides a very clear understanding of the reasons why the district court found that Respondent is likely to engage in further acts of sexually predatory conduct. The district court further provides a very clear rationale on why Respondent is distinguishable from the dangerous but typical recidivist and how Respondent has serious difficulty controlling his behavior.

**[¶ 7] CONCLUSION**

[¶ 8] Based on the forgoing reasons the State submits that the Amended Findings of Fact, Conclusions of Law, and Order Denying Discharge dated December 7, 2018, is sufficient

[¶ 9] Respectfully submitted this 28<sup>th</sup> day of January, 2019.

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**[¶ 8] CERTIFICATE OF SERVICE**

[¶ 9] A true and correct copy of the foregoing document was sent by e-mail on the 28<sup>th</sup> day of January, 2019, to Tyler J. Morrow at tyler@kpmwlaw.com.

Leah J. Viste