

**Supreme Court No. 20190016  
District Court No. 09-04-R-187**

**NORTH DAKOTA SUPREME COURT**

**In the Interest of R.A.S.**

**Cass County State's Attorney  
(Appellee)**

**v.**

**R.A.S.**

**(Appellant)**

Appeal from the Findings of Fact, Conclusions of Law, and Order for Judgment issued January 15, 2019, by the Honorable Steven Marquart of the Cass County District Court, East Central Judicial District

**BRIEF OF THE APPELLANT**

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STATUTES

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N.D.C.C. § 25-03.3-01(8)..... ¶ 4

## JURISDICTIONAL STATEMENT

[¶ 1] Jurisdiction in this matter is pursuant to N.D.C.C. § 25-03.3-19. The Cass County District Court issued a decision ordering R.S. remain civilly committed on January 15, 2019. R.S. timely filed this appeal on January 16, 2019.

ISSUE PRESENTED FOR REVIEW

- I. [¶ 2] Whether the District Court's Order's factual basis regarding R.S.'s behavior is sufficient to legally conclude R.S. has an inability to control his behaviors.

## STATEMENT OF THE CASE

[¶ 3] Petitioner filed a petition for civil commitment as a sexually dangerous individual (“SDI”) on February 23, 2004. After a hearing, R.S. was initially committed to the North Dakota State Hospital (“NDSH”) as an SDI on August 25, 2004.

[¶ 4] R.S. exercised his right to request a discharge hearing under N.D.C.C. § 25-03.3-18. A hearing on that request was held on January 11, 2019. The Cass County District Court determined that the state had established by clear and convincing evidence that R.S. remained a sexually dangerous individual pursuant to N.D.D.C. § 25-03.3-01(8) and denied R.S.’s discharge on January 15, 2019. R.S. appealed that decision on January 16, 2019.

## STATEMENT OF THE FACTS

[¶ 5] R.S. petitioned for an annual review hearing pursuant to N.D.C.C. § 25-03.3-18 on whether he remained a sexually dangerous. A hearing was held on January 11, 2019. The state called Dr. Richard Travis (“Travis”) to testify that R.S. remained a sexually dangerous individual subject to continued civil commitment.

[¶ 6] The Cass County District Court found that the State had proven by clear and convincing evidence that R.S. remained a sexually dangerous individual subject to continued civil commitment and issued an Order in that regard on September 17, 2018. R.S. filed his appeal on September 23, 2018. In its Order, the district found that not taking two doses of a prescription medication was factually sufficient to draw the legal conclusion that R.S. has an inability to control his behavior (District Court Order ¶ 9).

## ARGUMENT

### **I. [¶ 7] The District Court's Order's factual basis regarding R.S.'s behavior is insufficient to legally conclude R.S. has an inability to control his behaviors.**

[¶ 8] This 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, 805. The Court will affirm the district court's decision unless the “[o]rder 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. Here, the district court's order is not supported by clear and convincing evidence that R.S. has an inability to control his behavior.

[¶ 9] This Court previously analyzed the volitional control prong in *Johnson*,

We defer to a district court's determination that an individual has serious difficulty controlling behavior when it is supported by specific findings demonstrating the difficulty. In *G.L.D.*, we upheld a finding of serious difficulty controlling behavior when the individual frequently assaulted staff and his peers. 2011 ND 52, ¶ 7, 795 N.W.2d 346. In *Wolff*, we upheld a finding of serious difficulty when the individual yelled profanities, had an explosive temper, refused to attend treatment, and acted in a sexual manner with a peer. 2011 ND 76, ¶9, 796 N.W.2d 644. In *Matter of M.D.*, we upheld a finding of serious difficulty when the individual had engaged in a sexual relationship with a peer and stated he would take advantage of a minor if he knew he would not be caught, would use drugs if they were offered to him, and would provide oral sex if someone came to his door and wanted it. 2012 ND 261, ¶ 10, 825 N.W.2d 838.

*In the Interest of Johnson*, 2016 ND 29, 876 N.W.2d 25.

[¶ 10] Although *Wolff* recognized that the inability to control behavior need not be sexual in nature, the factual finding by the district court that choosing to not take a prescribed medication twice during a review period is a far cry from the above factual findings and does not support a legal conclusion that the state provided clear and convincing evidence that R.S. has serious difficulty controlling his behavior.

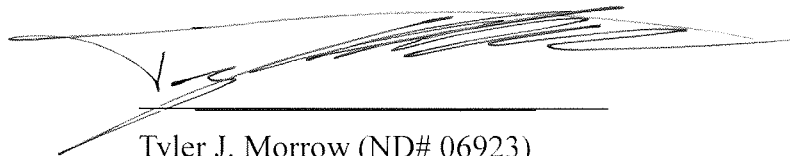


## CONCLUSION

[¶ 11] Under N.D.C.C. 25-03.3, at a petition for discharge hearing, the State bears the burden of proving an individual *remains* a sexually dangerous individual subject to civil commitment by clear and convincing evidence. This requires a present-day determination of sexual dangerous. The record is void of clear and convincing evidence showing an inability to control behavior over the review period.

[¶ 12] Based on the arguments set forth, the State has failed to meet its burden. The district court erred in determining that there was clear and convincing evidence that R.S. remains a sexually dangerous individual. R.S. respectfully requests this Court reverse the decision of the district court and grant R.S. his immediate release.

Respectfully submitted this 30<sup>th</sup> day of April, 2019.



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**IN THE SUPREME COURT OF NORTH DAKOTA**


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State of North Dakota,	)	
	)	#20180189
Petitioner,	)	#09-04-R-00187
	)	
-vs-	)	<b>CERTIFICATE OF SERVICE</b>
	)	
R. A. S. ,	)	
	)	
Respondent.	)	

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

**Appellant's Brief**  
**Appellant's Appendix**

Electronically through the Court Electronic Filing System to:

Leah Viste, Assistant State's Attorney, [sa-defense-notices@casscountynd.gov](mailto:sa-defense-notices@casscountynd.gov)

Dated: April 30, 2019

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