

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court No. 20190349
Burleigh County No. 08-2018-MH-145

In the Interest of Edward Skorick)
Tessa Vaagen)
Petitioner and Appellee,)
)
vs.)
)
Edward Skorick,)
)
Respondent and Appellant.)

APPEAL FROM MEMORANDUM DECISION, FINDINGS AND ORDER OF
COMMITMENT
ISSUED OCTOBER 30, 2019.

SOUTH CENTRAL JUDICIAL DISTRICT

HONORABLE JAMES S. HILL, PRESIDING

**BRIEF OF APPELLEE
STATE OF NORTH DAKOTA**

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STATEMENT OF THE ISSUES

1. Whether the District Court erred in considering Dr. Benson's and Dr. Travis' reports in its Memorandum Decision, Findings, and Order of Commitment.
2. Whether the district court adequately provided specific findings to conclude that Skorick had serious difficulty in controlling his behavior.

STATEMENT OF THE CASE

[¶ 1] On September 13, 2018, the State of North Dakota, through the undersigned, filed a Petition for Commitment of a Sexually Dangerous Person per North Dakota Century Code Chapter 25-03.3. App. 1. A Preliminary Hearing on the Petition was held on September 18, 2018. App. 1. The district court found the State had established probable cause showing the Respondent, Edward Skorick, was a sexually dangerous individual and ordered Skorick to be transferred to an appropriate treatment facility for an evaluation. App. 4, Index #20. The district court subsequently issued an Amended Order for Evaluation as a Sexually Dangerous Individual, requiring Skorick to be transported to the North Dakota State Hospital for an evaluation. App. 4, Index #33.

[¶ 2] Dr. Richard “Bo” Travis filed his Sexually Dangerous Individual Psychological Evaluation on November 27, 2018. App. 4, Index #34. Dr. Stacey Benson filed her independent evaluation on February 11, 2019. App. 4, Index #40.

[¶ 3] The district court held the commitment hearing on September 16, 2019. App. 5. The State called Dr. Travis as its sole witness. *See* Transcript of Civil Hearing held on September 16, 2019 (hereinafter “Tr.”). The State did not formally offer Dr. Travis’s evaluation as an exhibit. After the close of the State’s direct examination, the Respondent moved to strike Dr. Travis’s report from the record. Tr. 49. The State responded. Tr. 52-54. The district court indicated the report would stand as part of the record. Tr. 58, ln. 14.

[¶ 4] The Respondent also moved for judgment on partial findings, arguing the State had not proven the volitional control element. Tr. 59. The State responded. Tr. 62-65. The district court indicated a decision and findings would be made based on the record and took the matter under advisement. Tr. 66-67. At the close of the hearing, the district court

allowed the parties to submit post-hearing briefs. Tr. 108-110. Both parties submitted post-hearing briefs on October 4, 2019. App. 5, Index #72 and 75.

[¶ 5] The district court entered an Order granting the State's Petition for Commitment, finding Skorick to be a sexually dangerous individual, and committing him to the custody of the Department of Human Services. App. 7-21. Skorick filed timely notice of this appeal on November 14, 2019. App. 22.

STATEMENT OF THE FACTS

[¶ 6] The facts supporting Skorick's commitment were largely provided by testimony from Dr. Travis and Dr. Travis's evaluation. Dr. Travis indicated he completed the evaluation in November of 2018. Tr. 17.

[¶ 7] Dr. Travis is employed with the North Dakota State Hospital as an evaluator for sexually dangerous individuals. Tr. 6. He was qualified as an expert for his testimony regarding his evaluation of Skorick. Tr. 8. Dr. Travis has completed six initial evaluations for sexually dangerous individuals and found that the person being evaluated did not meet the criteria in half of those cases. Tr. 8.

[¶ 8] Dr. Travis indicated as part of the process for completing an initial evaluation, he reviews court documents, police reports, Department of Corrections and Rehabilitation records, treatment records from the State Hospital, and anything else submitted as discovery in the case. Tr. 9. He explained those records help him in determining diagnoses, risk level, and ultimately whether the individual meets the criteria for a sexually dangerous individual. Tr. 10-11. Dr. Travis also testified he looks at any treatment records from the State Hospital to see how much treatment the individual received and whether that

treatment is “adequate to reduce [the] risk of sexual reoffending once [the individual] is returned to the community.” Tr. 11, ln. 13-16.

[¶ 9] Dr. Travis indicated Skorick was offered an opportunity to participate in the interview for the evaluation process, but he did not take that opportunity. Tr. 12, ln. 1-12. He also indicated lack of an interview does not significantly impact his findings. Tr. 13, ln. 5-7.

[¶ 10] Dr. Travis testified about his review of Skorick’s history as part of his assessment. Tr. 13. He identified sexually predatory conduct in Skorick’s history. Tr. 13, ln. 18-24. Dr. Travis testified Skorick had at least two formal convictions for Gross Sexual Imposition. Tr. 13, ln. 18-24. He put the facts for those cases on the record at the civil hearing. Tr. 14-17.

[¶ 11] Dr. Travis testified about his diagnoses for Skorick. Specifically, Dr. Travis diagnosed Skorick with 1) antisocial personality disorder, 2) other specified paraphilic disorder, 3) hypersexual with pedophilic, voyeuristic, exhibitionistic, and fetish theft behavior, and 4) alcohol use disorder, in sustained remission in a controlled environment. Tr. 17, ln. 10-14.

[¶ 12] Dr. Travis described antisocial personality disorder for the court. Tr. 17. He indicated it is “a disorder of pervasive and persistent behaviors and attitudes and thoughts that are outside the norm that involve violating other people’s rights, violating their boundaries by using people and taking what you want from them.” Tr. 17, ln. 16-20. He indicated some criteria for the disorder include 1) “persistent violation of laws and rules,” 2) “putting oneself or others in harm’s way,” 3) deceitfulness, 4) impulsivity, 5) irritability,

6) irresponsibility, and 7) lack of remorse. Tr. 17, ln.20-24. Dr. Travis then said Skorick met all seven (7) of those criteria. Tr. 18, ln. 1-3.

[¶ 13] Dr. Travis explained Skorick met those criteria because, in part, he has “something like 70 criminal convictions on his record.” Tr. 18, ln. 16. About those convictions, Dr. Travis described them as the following: “Some of them are minor, some of them are major, sexual and nonsexual violence, putting people in harm’s way, the gross sexual imposition, plus some nonsexual violence offenses, deceitfulness, he’s been dishonest with people about his offending history, impulsivity.” Tr. 18, ln. 16-21. Further, he indicated, “Some of the stuff he’s done is . . . appears to not be considering the consequences at all, like masturbating in the middle of an intersection while cops are there talking to you.” Tr. 18, ln. 22-25. Dr. Travis also indicated Skorick had fifty-six (56) major infractions and scores of minor infractions while incarcerated. Tr. 20, ln. 1-8. Only three of those infractions were considered sexual misconduct. Tr. 20, ln. 8-10. However, Dr. Travis indicated, “[I]t’s not unusual for a person to have no or very few sexual misconduct instances while they are in a controlled environment.” Tr. 20, ln. 21-23.

[¶ 14] Dr. Travis testified while antisocial personality disorder is not, in and of itself, a sexual disorder, it is a sexually violent disorder for Skorick. Tr. 21, 8-10. He reached that conclusion because of Skorick’s number of convictions that are sexual in nature and the “pattern of repeated sexual violations.” Tr. 21, 12-14. Dr. Travis expounded,

So his sexual interest and his paraphilic disorder really fuel what those interests are, gets him going in a certain direction where he’s going after what he wants, and because he really doesn’t care about anybody else but himself, he goes and he acts upon it, and sometimes he acts upon it with such focus that he’s not even paying much attention to his surroundings and what’s going on with him at the time. So his antisocial personality disorder, it really refers to the callousness and also to the behavioral disinhibition.

Tr. 22, ln. 6-15. Skorick has not aged out of his antisocial personality disorder. Tr. 94, ln. 94-18.

[¶ 15] Dr. Travis explained paraphilic disorder as “some sort of sexual interest, arousal, urges, fantasies, that is conducted with nonconsenting persons, or it rises to the level of causing clinical distress for the person, but it’s in some ways harmful, and that’s why they call it a disorder.” Tr. 24, ln. 15-19. Skorick was identified with paraphilic hypersexuality because “he was offending across the board.” Tr. 24, ln. 20-21. Moreover, Skorick was repeatedly sanctioned for his behaviors, yet still continued to engage in it. Tr. 25, ln. 4-5.

[¶ 16] Dr. Travis said Skorick’s diagnoses together cause concern for reoffending. Tr. 26, ln. 9-11. Dr. Travis explained, “This is the fuel for sexual acting out.” Tr. 26, ln. 9.

[I]t’s not only driving the behavior as far as he’s drawn to it, there’s a disinhibitive impact with this disorder also, in that when . . . people are sexually offending, it’s almost like they develop a tunnel vision where they may previously consider what consequences there might be or whether this thing is going to be impactful to the person they’re about to harm. But in the middle of doing the offending, all of that stuff just goes out the window and just totally focused on what it is that they’re doing with little sight for anything else.

Tr. 26:21 – 27:7.

[¶ 17] Dr. Travis also diagnosed Skorick with alcohol use disorder. Tr. 27. He indicated it is a larger problem for Skorick because alcohol is “bad for him and it is a disinhibitor when it comes to his sexual behavior.” Tr. 29, ln. 2-3. Dr. Travis was concerned that Skorick looked forward to “sitting on his front porch drinking a beer” when he got out because it should be obvious to Skorick that “alcohol for him is just fuel for the fire of his problematic behavior.” Tr. 29, ln. 21-23.

[¶ 18] Dr. Travis then explained the risk assessment tools he used to evaluate Skorick. Dr. Travis indicated the tools don’t say what the individual is going to do when he is in prison,

but they do indicate what the individual is going to do when he's released back into the community. Tr. 32. Dr. Travis used the Static-99R and Static-2002R to evaluate Skorick's risk of recidivism. Tr. 32, ln. 12-13.

[¶ 19] The Static-99R is the most widely used risk assessment and is considered a best practice tool. Tr. 34-35. An interview is not required for the Static-99R. Tr. 36, ln. 21-23. Skorick scored a seven (7) on that tool, which is the highest of five risk categories, and is considered well-above average risk. Tr. 37, ln. 14-17. A person who scores seven (7) on the tool is "5.25 times more likely to sexually reoffend than a typical sex offender who scores a (2) on the tool. Tr. 37, ln. 20-22. A seven (7) is higher than 96 percent of the people upon whom the instrument was normed. Tr. 37, ln. 23-24. The Static-2002R has incremental validity when combined with the Static-99R. Tr. 38, ln. 24-25. It is also considered a best practice tool. Tr. 39, ln. 7-8. Skorick scored a nine (9), which is in the highest risk category and considered well above average risk. Tr. 40, ln. 8-9. A score of nine (9) is associated with about a 44 percent sexual recidivism rate over five years. Tr. 40, ln. 10-11. A person who scores a nine (9) on the tool is "6.9 times more likely to sexually reoffend than the typical sex offender who scores a three on this test." Tr. 40, ln. 11-13. A nine (9) is higher than 97.2 percent of the people upon whom the test was normed. Tr. 40, ln. 14-15. Dr. Travis administered the Stable-2007 for Skorick's assessment. Tr. 40, ln. 16-17. Skorick scored a sixteen (16) on the test, which places him in the highest risk category. Tr. 43, ln. 8-10.

[¶ 20] Dr. Travis then testified he believed Skorick will have serious difficulty controlling his sexual behaviors if discharged. Tr. 45, ln. 8-10. Dr. Travis clarified Skorick does not control his behavior in the community, but is capable of controlling it while in a controlled

setting. Tr. 71, ln. 16-18. More specifically, “He controls his behavior in controlled environments, he doesn’t control his behavior in uncontrolled behaviors.” Tr. 91, ln. 10-14. Dr. Travis relied on Skorick’s lengthy criminal record and scores on the risk assessment tools to reach that conclusion. Tr. 45:22 – 46:2 Specifically, Skorick is “in the highest risk group to continue engaging in this behavior.” Tr. 45, ln. 17-18. Skorick also has disorders that “are associated with decreased lack of control and difficulty controlling behavior.” Tr. 96, ln. 16-18.

[¶ 21] Skorick’s age did not change Dr. Travis’s assessments. Tr. 46, ln. 7-14. That Skorick completed some sex offender treatment also did not change Dr. Travis’s assessments because, based on Dr. Travis’s experience, Skorick did not complete nearly enough treatment to make a markable difference. Tr. 46:15 – 47:6.

[¶ 22] Dr. Travis also indicated Skorick had some behavioral difficulties in between the time of his evaluation being completed in November 2018 and the hearing. Tr. 47, ln. 18-25. He had approached a staff member at the State Hospital with his fist raised. Tr. 47, ln. 21-25. He also had minor violations while at the State Hospital. Tr. 48, ln. 2-6. Dr. Travis indicated these minor violations were evidence of Skorick’s antisocial personality disorder and that Skorick’s difficulty listening to authority. Tr. 91, ln. 2-9. Dr. Travis was specifically concerned because Skorick was admonished for those behaviors, yet continued to do them. Tr. 92, ln. 17-24.

[¶ 23] Dr. Travis concluded, based on his evaluation, Skorick met the criteria for being a sexually dangerous individual. Tr. 48, ln. 9-11.

LAW AND ARGUMENT

[¶ 24] Skorick raises two issues in his appeal: (1) whether the district court erred in considering Dr. Benson's and Dr. Travis' reports in its Memorandum Decision, Findings, and Order of Commitment; and (2) whether the district court adequately provided specific findings to conclude that Skorick has serious difficulty in controlling his behavior.

1. Whether the District Court erred in considering Dr. Benson's and Dr. Travis' reports in its Memorandum Decision, Findings, and Order of Commitment.

[¶ 25] The defendant argues the district court improperly considered the reports of Dr. Benson and Dr. Travis in making its decision because the reports were not formally offered into evidence by the State. Because the circumstances of the reports are distinguishable, the State will address each one separately.

a. Whether the District Court erred in Considering Dr. Travis' report.

[¶ 26] Skorick argues the district court erred in considering Dr. Travis' report because it was not properly admitted into evidence and no provision under North Dakota Century Code § 25-03.3-13 allows for the report to be automatically considered by the district court. Here, the State did not offer Dr. Travis' report during its initial direct examination; rather, the State requested the District Court take judicial notice of the report. (T. 54). Skorick objected, stating that the State was not allowed to offer evidence after it had rested. (T. 55). The district Court allowed the parties further argument with post-hearing briefs, but at that time, allowed the report to stand as part of the record. (T. 58).

[¶ 27] SDI commitment proceedings are civil proceedings, and the North Dakota Rules of Civil Procedure apply. *Matter of Hehn*, 2015 ND 218, ¶ 17, 868 N.W.2d 551. Skorick's argument is evidentiary in nature. A district court's admission of evidence is reviewed under an abuse of discretion standard. *Estate of Vestre*, 2011 ND 144, ¶ 11, 799 N.W.2d

379. “A court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, when it misinterprets or misapplies the law, or when its decision is not the product of a rational mental process leading to a reasoned determination.” *S.L.W. v. Huss*, 2014 ND 169, ¶ 8, 852 N.W.2d 367 (citing *Meier v. Meier*, 2014 ND 127, ¶ 7, 848 N.W.2d 253).

[¶ 28] “At the commitment proceeding, any testimony and reports of an expert who conducted an examination are admissible, including risk assessment evaluations.” N.D.C.C. § 25-03.3-13. The effect of that statute “is to allow the admission of expert reports which would otherwise be excluded from admission as hearsay pursuant to N.D.R.Evid. 807.” *Matter of Gomez*, 2018 ND 16, ¶ 15, 906 N.W.2d 87. The admission of expert testimony is within the discretion of the district court, and this Court will not reverse absent a showing of an abuse of discretion. *Rittenour v. Gibson*, 2003 ND 14, ¶ 29, 656 N.W.2d 691.

[¶ 29] The district court did not abuse its discretion in admitting Dr. Travis’ report because the State filed the report in advance of the hearing and the report was admissible under N.D.C.C. § 25-03.3-13. The defendant had sufficient notice that the report was filed and, although the State did not offer the report as an exhibit at the hearing until the defendant moved to strike it from the record, the State at that point referred to the report as having been filed and asked the court to considering the report in its decision. The district court admitted the report and allowed the defendant the opportunity to cross-examine Dr. Travis regarding the contents of the report, the Dr. Travis’ opinions, and the basis for those opinions. That is sufficient to satisfy the requirement in § 25-03.3-13 that the defendant have the right to cross-examine witnesses. Thus, the district court did not act unreasonably,

arbitrarily, or unconscionably in admitting Dr. Travis' report and, therefore, did not abuse its discretion.

b. Whether the District Court erred in Considering Dr. Benson's report.

[¶ 30] Unlike Dr. Travis, Dr. Benson was not called by either party to testify at Skorick's civil commitment hearing. Skorick argues that the district court erred in considering Dr. Benson's report. The State agrees. The district court improperly considered Dr. Benson's report; the report was not offered into evidence and Dr. Benson did not testify at the hearing. However, such error by the district court was harmless error.

[¶ 31] North Dakota Rules of Civil Procedure Rule 61, sets out the harmless error standard for civil cases as:

Unless justice requires otherwise, no error in admitting or excluding evidence, or any other error by the court or a party is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

This Court has helped define harmless error as:

Harmless error is error that is not prejudicial. *Hamilton v. State*, 2017 ND 54, ¶ 8, 890 N.W.2d 810 (quoting *State v. Acker*, 2015 ND 278, ¶ 12, 871 N.W.2d 603). If evidence is admitted in error, this Court will consider the entire record and decide in light of all the evidence whether the error was so prejudicial the defendant's rights were affected and a different decision would have occurred absent the error. [*State v.*] *Azure*, 2017 ND 195, ¶ 22, 899 N.W.2d 294 (quoting *State v. Doppler*, 2013 ND 54, ¶ 21, 828 N.W.2d 502). Cumulative evidence to properly admitted evidence does not "affect substantial rights of the parties, and accordingly, is harmless error". *Azure*, at ¶ 22. (quoting *State v. Leinen*, 1999 ND 138, ¶ 17, 598 N.W.2d 102).

State v. Foster, 2019 ND 28, ¶ 9, 921 N.W.2d 454.

[¶ 32] The district court mention's Dr. Benson's report and opinions throughout its findings and order. However, each time Dr. Benson's opinion in mentioned, it is not in

isolation, it is always with Dr. Travis's report and testimony. In fact, in every single citation, except for one, the district court finds that Dr. Benson and Dr. Travis are in agreement with their findings. With regards to the first element, the court stated: "This Court observes that neither Dr. Travis nor Dr. Benson dispute that Mr. Skorick's 2002 and 1985 conviction and his behavior satisfy the "sexually predatory conduct' element." App. 15. During its analysis of prong three, the district court noted that both doctors used various risk-assessment instruments to determine Skorick's likelihood to re-offend and found that "[b]oth doctors scored Mr. Skorick at 7 on the Static-99R test." App. 15. Further in its findings, the district court discusses Dr. Travis's report and testimony about whether the defendant had serious issues controlling his behavior and later followed with: "Dr. Benson agreed with many of these conclusions in her report, and further agreed that Mr. Skorick would have serious difficulty controlling his sexual behavior if discharged from the State Hospital at this time." App. 19. The district court further explains its findings for this prong with noting that both doctors took into account the same factors in coming to the same conclusion that Skorick continues to have serious difficulty controlling his behavior. App. 20.

[¶ 33] The only time in which the district court noted any difference between Dr. Benson's and Dr. Travis' reports was in its analysis of the second prong – whether Skorick suffers from a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction. Each doctor came to a slightly different diagnosis for Skorick. The district court acknowledged the differences and stated: "While the diagnoses are not identical, there are some similarities and Dr. Travis testified persuasively regarding his reasoning for his determination." App. 12. The district court

then proceeds to discuss Dr. Travis' report and testimony for the next eight paragraphs without any regard to Dr. Benson's report.

[¶ 34] In this case, the district court may have erroneously considered Dr. Benson's report in its analyses. However, as is evident by the Court's findings outline above, such consideration was merely cumulative evidence to the properly admitted and considered evidence of Dr. Travis's testimony and report. (*see Azure*, at ¶ 22 "Cumulative evidence to properly admitted evidence does not 'affect substantial rights of the parties, and accordingly, is harmless error'". (quoting *State v. Leinen*, 1999 ND 138, ¶ 17, 598 N.W.2d 102)). Therefore, the district court did not commit reversible error when it erroneously considered Dr. Benson's report.

[¶ 35] Because the district court properly considered Dr. Travis' report and its consideration of Dr. Benson's report was harmless, the Court should affirm the district court's order.

2. Whether the District Court adequately provided specific findings to conclude that Skorick has serious difficulty in controlling his behavior.

[¶ 36] Skorick argues the district court erred in finding there was clear and convincing evidence that Skorick has serious difficulty controlling his behavior. In order for an individual to be committed, the State must prove, by clear and convincing evidence, three elements:

[1] engaged in sexually predatory conduct and [2] who has congenital or acquired condition that is manifested by asexual disorder, a personality disorder, or other mental disorder or dysfunction that [3] 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.

In re E.w.F., 2008 ND 130, ¶ 9, (quoting N.D.C.C. § 25-03.3-01(8)).

[¶ 37] In addition to the three-pronged test under N.D.C.C. 25-03.3-13, the United States Supreme Court added a fourth element for courts to consider to ensure the defendant's substantive due process remains intact – a determination of whether the defendant has serious difficulty controlling his behavior. *See Kansas v. Crane*, 534 U.S. 407 (2002). This Court has examined this fourth element numerous times since 2002. This Court has:

Construed the definition of a sexually dangerous individual to require a nexus between the disorder and dangerousness, including evidence showing the individual has serious difficulty controlling his behavior. . . . This additional consideration is necessary to distinguish a sexually dangerous individual from the dangerous but typical recidivist convicted in an ordinary criminal case.

In re Corman, 2014 ND 88, ¶ 22, 845 N.D.2d 355 (internal citation and quotation omitted).

[¶ 38] Neither North Dakota law, nor *Kansas v. Crane*, “require the conduct evidencing the individual's serious difficulty in controlling his behavior to be sexual in nature.” *Matter or R.A.S.*, 2019 ND 169, ¶ 7, 930 N.W.2d 162, (quoting *Matter of Wolff*, 2011 ND 76, ¶ 7, 796 N.W.2d 644.). Furthermore, “A district court's finding that an individual has serious difficulty controlling behavior is deferred to when it is supported by specific findings demonstrating the difficulty.” *Id.* at ¶ 9.

[¶ 39] Here, the district court provided adequate support and findings in determine Skorick has serious difficulties controlling his behavior. Skorick argues the only evidence the State presented through Dr. Travis of the defendant's inability to control his behavior was a statement that Skorick made a fist at an employee, but stopped himself short of any further action. However, far more information was presented to the district court about Skorick's ability to control his behaviors, including: (1) prior violations while incarcerated; (2) history of controlling his behavior in the community; (3) Skorick's statements about alcohol consumption; and (4) Skorick's lack of treatment. The district court took all of this

additional testimony into consideration in finding Skorick has serious difficulty controlling his behavior.

a. Skorick's Prior Violations While Incarcerated

[¶ 40] The district court took Skorick's prior violations while he was in custody into consideration as to whether Skorick had serious difficulty in controlling his behavior. Specifically, the district court noted that Skorick "had more than fifty major violations and a score of minor violations while in custody" and discussed one such violation where Skorick's actions were sexual in nature. App. 18. The district court also noted that the defendant had also clenched his fist at a staff member. App. 19.

b. Skorick's History of Controlling His Behavior in the Community

[¶ 41] The district court concluded that the defendant's "current progress [does not] sufficiently negate[] the substantial and longstanding evidence of his serious difficulty controlling his behavior in the community." App. 20. This finding is heavily supported in the record where Dr. Travis testifies that the defendant can control his behavior in a controlled environment, but cannot control his behavior in the community. *See* Tr. 71, 81, 91, 99, 102. The district court cited Dr. Travis' testimony in concluding that the defendant "continues to have serious difficulty controlling his behavior." App. 20.

c. Skorick's Alcohol Consumption

[¶ 42] The district court also considered Skorick's comments about wanting to have a beer as soon as he is release, finding, "because alcohol is an inhibitor, it would greatly inhibit Mr. Skorick's ability to control his behavior if he gets a risk management plan in place." App. 19.

d. Skorick's Lack of Proper Treatment

[¶ 43] At the commitment hearing, Dr. Travis testified regarding the defendant's lack of participation in treatment and his refusal to participate in sex offender treatment until 2016. App. 18. Dr. Travis' report notes that, in refusing treatment, the defendant told his psychiatrist that he did not intend to complete sex offender treatment. App. 19. He also claimed that the charges in his index sexual offense were completely false. App. 19. The district court noted that, although the defendant had some introductory sex offender treatment, the "high risk" posed by the defendant rendered the treatment a "good introductory step" but was not "enough to reduce his risk to reoffend below the level of likely to engage." App 19. The district court noted that the defendant completed only introductory treatment and, therefore, the defendant remains a sexually dangerous individual. App. 20.

[¶ 44] Lastly, the district court also considered all of these behaviors in combination with Skorick's sexual disorders and personality disorders. App. 19. Although not elaborated in the district court's section for inability to control his behavior, the district court discussed Skorick's diagnosis of Antisocial Personality Disorder and how it affects his behavior. Specifically, the district court stated, Skorick's "antisocial orientation fuels taking what he wants from others, including sexually, without any regard for their boundaries or wishes." App. 12.

[¶ 45] All of these factors, taken together, clearly show the district court took more into consideration than just the defendant clenching his fist, in determine whether the defendant has a serious issues controlling his behavior. It is clear, from the record and the district court's findings, that Skorick has a significant history of not being able to control his

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Edward Skorick,)	08-2018-MH-145
)	
Respondent and Appellant.)	

CERTIFICATE OF COMPLIANCE

[¶ 1] COMES NOW Mindy Anderson of Bismarck, North Dakota, and hereby certifies that the attached Brief of the Appellee is in compliance with Rule 32(a)(8)(A), North Dakota Rules of Appellate Procedure.

[¶ 2] The number of pages in the principal Brief, excluding any addenda, is twenty-one (21) pages, according to the page count of the filed electronic document.

Dated this 20th day of March, 2020.

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Attorney for Petitioner/Appellee

IN THE SUPREME COURT
OF THE STATE OF NORTH DAKOTA

IN THE INTEREST OF EDWARD SKORICK

Tessa Vaagen,)	
)	
Petitioner/Appellee,)	Supreme Court No. 20190349
)	
-vs-)	Burleigh County Case No.
)	08-2018-MH-00145
Edward Skorick,)	
)	
Respondent/Appellant.)	

Gwen Tardif, being first duly sworn, depose and say that I am a United States citizen over 21 years old, and on the 20th day of March, 2020, I served the following:

- 1. Brief of Appellee
- 2. Certificate of Compliance
- 3. Affidavit of e-service

on the following electronic transmission to the listed email address of:

Tyler Morrow
Attorney at Law
tyler@kpmwlaw.com

which address is the last known email address of the addressee.

Gwen Tardif
Gwen Tardif

Subscribed and sworn to before me this 20 day of March, 2020.

Mandy M. Pitcher
Notary Public,
Burleigh County, North Dakota

