

IN THE SUPREME COURT OF NORTH DAKOTA

In the Interest of G.L.D.)	Supreme Court File
-----)	#20220295
State of North Dakota,)	
Petitioner/Appellee)	Morton County Court File
)	#09-04-R-00904
v.)	30-04-R-00044
G.L.D.,)	APPELLANT'S BRIEF
Respondent/Appellant)	

Appeal from the Order Denying Discharge entered October 3, 2022 in Morton County District Court, South Central Judicial District, North Dakota the Honorable Bobbi Weiler presiding.

APPELLANT'S BRIEF
ORAL ARGUMENT REQUESTED

Tyler J. Morrow
Attorney for Appellant
ND #06923
Morrow Law
527 Demers Avenue
Grand Forks, ND 58201
Ph.: (701) 772-8991
tyler@morrowlawfirms.com

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JURISDICTIONAL STATEMENT

[¶ 1] Jurisdiction in this matter is pursuant to N.D.C.C. § 25-03.3-19. The Morton County District Court issued a decision ordering G.L.D. to remain civilly committed on October 3, 2022. G.L.D. timely filed this appeal on October 6, 2022.

ISSUE PRESENTED FOR REVIEW

- I. [¶ 2] **Whether the District Court's Order's factual basis regarding G.L.D.'s behavior is sufficient to legally conclude G.L.D. has serious difficulty controlling his behavior.**

Oral Argument:

Oral argument has been requested to emphasize and clarify the Petitioner's written arguments on their merits.

STATEMENT OF THE CASE

[¶ 3] Petitioner filed a petition for civil commitment as a sexually dangerous individual (“SDI”) on March 5, 2004. After a hearing, G.L.D. was initially committed to the North Dakota State Hospital (“NDSH”) as an SDI on June 14, 2007.

[¶ 4] G.L.D. 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 September 26, 2022. The Morton County District Court determined that the state had established by clear and convincing evidence that G.L.D. remained a sexually dangerous individual pursuant to N.D.C.C. § 25-03.3-01(8) and denied G.L.D.’s discharge on October 3, 2022. G.L.D. appealed that decision on October 6, 2022.

STATEMENT OF THE FACTS

[¶ 5] G.L.D. petitioned for an annual review hearing pursuant to N.D.C.C. § 25-03.3-18 on whether he remained a sexually dangerous individual. A hearing was held on September 26, 2022. The state called Dr. Peter Byrne (“Byrne”) to testify that G.L.D. remained a sexually dangerous individual subject to continued civil commitment.

[¶ 6] The Morton County District Court found that the state had proven by clear and convincing evidence that G.L.D. remained a sexually dangerous individual subject to continued civil commitment.

ARGUMENT

I. [¶ 7] The District Court's Order's factual basis regarding G.L.D.'s behavior is insufficient to legally conclude G.L.D. has serious difficulty controlling his behavior.

[¶ 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 G.L.D. has serious difficulty controlling 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 does not support a legal conclusion that the state provided clear and convincing evidence that G.L.D. has serious difficulty controlling his behavior. The district court order relies heavily on past

behaviors, and the present behaviors do not rise to the level of serious difficulty controlling behavior.

[¶11] The district court order is completely void of specific behaviors used to justify a finding of serious difficulty controlling behavior (R487:4). While vague and generic references to behavior issues are referenced, the only factually specific findings by the district court are that G.L.D. has refused to participate in treatment (status in treatment), refuses to take responsibility for his actions, and G.L.D. has had no sexually deviant behaviors over the review period.

[¶12] This Court has recently addressed multiple cases with similar fact patterns. In *T.A.G.*, this Court stated, “The status in treatment and one statement regarding ‘cream pie’ do not establish a serious difficulty controlling behavior sufficient to satisfy the *Crane* due process requirement.” *Interest of T.A.G.*, 2019 ND 115, 926 N.W.2d 702. In *R.A.S.*, this Court found “The isolated instances of refusing two doses of prescribed medication do not establish a serious difficulty controlling behavior.” *In the Matter of R.A.S.*, 2019 ND 169, 930 N.W.2d 162. Finally, in *J.M.*, this Court found that an alleged altercation with another resident, a horseplay incident where J.M. threw a rock at another resident, and both experts testifying that J.M. had aggression issues was not clear and convincing evidence of serious difficulty. *In the Matter of J.M.*, 2019 ND 125, 927 N.W.2d 422.

[¶ 13] The present case fits closely with the three previously cited cases. Nothing on the record reflects clear and convincing evidence that G.L.D. presently has serious difficulty controlling his behavior.

CONCLUSION

[¶ 14] 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 dangerousness. The record is void of clear and convincing evidence showing serious difficulty controlling behavior over the review period.

[¶ 15] 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 G.L.D. remains a sexually dangerous individual. G.L.D. respectfully requests this Court reverse the decision of the district court and grant his immediate release.

Respectfully submitted this 26th day of January, 2023.

/Tyler J. Morrow

Tyler J. Morrow (ND# 06923)
Morrow Law
527 Demers Ave
Grand Forks, ND 58201
T: (701) 772-8991
E: tyler@morrowlawfirms.com
Attorney for Respondent-Appellant

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G.L.D.,)	CERTIFICATE OF
Respondent/Appellant)	COMPLIANCE

[¶ 1] This Appellant’s Brief and Appendix complies with the page limit of 38 set forth in Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure.

Dated: January 26, 2023.

/s/ Tyler J. Morrow
ND# 06923
Morrow Law
527 Demers Ave
Grand Forks, ND 58201
T: (701) 772-8991
E: tyler@morrowlawfirms.com
Attorney for Appellant

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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
Certificate of Compliance**

Electronically through the Court Electronic Filing System to:

Allen Kopyy, Morton County State's Attorney, mortonsa@mortonnd.org

Dated: January 26, 2023.

/s/ Tyler J. Morrow
ND# 06923
Morrow Law
527 Demers Ave
Grand Forks, ND 58201
T: (701) 772-8991
E: tyler@morrowlawfirms.com
Attorney for Appellant