

**WISCONSIN SUPREME COURT**  
**TUESDAY, MAY 3, 2011**  
**9:45 a.m.**

*This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed a decision by Milwaukee County Circuit Court, Judge Martin J. McDonald, presiding.*

2009AP1579

State v. West

In this case, the Supreme Court is asked to review statutory and constitutional issues related to Wis. stat. ch. 980, the state's law that allows civil commitment for persons deemed to be sexually violent.

Some background: Edwin West was committed under ch. 980 in 1997. In April 2008 he filed a petition for supervised release, which was denied by the circuit court in a decision affirmed by the Court of Appeals.

Specifically, West's petition raises the following issue: Does 2005 Wis. Act 434 § 118 (codified at Wisconsin Statutes § 980.08(4)(cg)) shift the burden of proof at a supervised release hearing under Chapter 980 to the civilly-committed respondent?

Prior to the effective date of the new legislation on Aug. 1, 2006, the statutory presumption was to grant a petition for supervised release, and the state clearly bore the burden to show that release was not warranted. West argues that the new statute, which does not explicitly assign the burden of proof, should be similarly interpreted to place the burden on the state. Among other things, he urges that the supervised release provision should be treated like a criminal statute under the rule of lenity and be given a narrow construction in favor of the person whose liberty is at stake. In addition, West argues that the statute as modified cannot be interpreted to shift the burden of proof to the committed person because such a shift would violate constitutional due process and equal protection rights.

West's petition for review essentially asks this court to review the rules of law established by the Court of Appeals in State v. Rachel, 2010 WI App 60, 324 Wis. 2d 465, 782 N.W.2d 443, which decided the burden of proof and constitutionality issues contrary to the position taken by both Rachel and West. However, Rachel never reached the Wisconsin Supreme Court.

After conducting an evidentiary hearing, the circuit court concluded that West had not satisfied the new statutory criteria, and it denied his petition for supervised release.

The court of appeals affirmed, stating that it had already decided these issues contrary to the position of the committed individual in Rachel. Thus, it was bound by the Rachel decision to reject West's arguments that the burden should be on the state and that to place the burden of proof on the committed person would be unconstitutional.

West notes that only approximately 20 of the 350 people committed under Chapter 980 are on supervised release. Thus, he contends that resolution of the statutory interpretation and constitutional issues will have a statewide impact on a significant number of individuals.