COURT OF APPEALS
DECISION
DATED AND FILED

March 23, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-2469-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

CHAD ALLAN BLODGETT,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Pierce County: ROBERT W. WING, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Chad Blodgett appeals an order committing him to a mental institution after he was found not guilty by reason of mental disease or defect (NGI). He argues that the State failed to prove by clear and convincing evidence that institutional commitment was required rather than conditional release. We reject that argument and affirm the order.

Blodgett shot two of his brothers in an unprovoked attack in September 1997. He entered an NGI plea to two counts of substantial battery in return for which the State dismissed attempted murder charges and agreed not to contest his NGI defense.

The only issue before the circuit court was whether Blodgett should be placed in a secure institution or given conditional release to a group home such as Brodolac. In support of conditional release, Blodgett presented testimony of Dr. Harlan Heinz, who testified at the disposition hearing that medication was having a positive effect on Blodgett and had cleared his thinking significantly. Dr. Heinz opined that the Brodolac would be an appropriate placement and that it was not necessary to send Blodgett to the Mendota Mental Health Center.

Also, a Brodolac intake social worker testified that Blodgett was an acceptable candidate for placement there. He testified that any refusal to take medication would be documented and if any paranoid symptoms arose, Blodgett's medications would be checked and psychiatric input sought. If necessary, short term crisis facilities could be used or hospitalization undertaken. Brodolac would provide Blodgett with a structured routine and his progress would be monitored and a discharge plan developed. Nonetheless, the trial court concluded that conditional release to a facility like Brodolac would not adequately protect the public.

Under § 971.17(3)(a), STATS., the court shall commit a person found not guilty by reason of mental disease or defect to institutional care if it finds that conditional release would pose a significant risk of bodily harm to himself or others or serious property damage. The State bears the burden of proving by clear and convincing evidence that conditional release would pose such a risk. ***Id.*** In

reaching this decision, the circuit court considers the nature and circumstances of the crime, the person's mental history and present mental condition, where he will live, how he will support himself, what arrangements are available to insure his access to necessary medication and what arrangements there are for possible treatment beyond medication. ***Id.***

The circuit court's findings of fact are reviewed in the light most favorable to the verdict and will be sustained if there is any credible evidence supporting them. ***State v. Gebarski***, 90 Wis.2d 754, 780, 208 N.W.2d 672, 683 (1979); *See* ***State v. Gladney***, 120 Wis.2d 486, 490, 355 N.W.2d 547, 549 (Ct. App. 1984). The parties note that the case law contains inconsistencies regarding the deference this court gives to the circuit court's ultimate decision. Release from an insanity commitment has been viewed as a discretionary matter because it is comparable to a sentencing decision. *See* ***State v. Cook***, 66 Wis.2d 25, 27-28, 224 N.W.2d 194, 196 (1974). Revoking a conditional release and the necessity for protective placement have been described as applying the facts to the law, a question of law for which no deference is accorded. *See* ***State v. Jefferson***, 163 Wis.2d 332, 338, 471 N.W.2d 274, 277, (Ct. App. 1991); ***In re K.N.K.***, 139 Wis.2d 190, 198, 407 N.W.2d 281, 285 (Ct. App. 1987). We need not resolve that conflict because our result is the same regardless of whether we accord deference to the trial court's ultimate decision.

The record establishes by clear and convincing evidence that Blodgett's conditional release would pose a significant risk of bodily harm to others. The psychiatric reports show that Blodgett suffers from serious psychological disorders. He had been admitted to a hospital but checked himself out against medical advice after refusing to take medication. That same day, he shot and seriously injured his brothers. These incidents occurred only six months

before the disposition hearing. The medical experts agreed that Blodgett needs medication and treatment to avoid delusional thinking, and without medication, any kind of stress or pressure would cause his paranoid delusions to recur. Therefore, the trial court properly stressed Blodgett's need for medication, the uncertainty that Blodgett would take his medication and the danger to the public that would occur if he failed to take his medication.

Blodgett presented evidence that he had taken his medication for twenty days before the hearing. As the trial court noted, twenty days is not a sufficient track record in light of Blodgett's previous refusal to take medication. The court also noted that Blodgett has been insulated from the stresses of ordinary life and family problems for the preceding six months. While his delusional thinking has significantly decreased, his ability to handle stress has not been tested.

Brodolac is not a secure facility. While it monitors its patients' medication, neither placement at Brodolac nor imposing other conditions of release can assure immediate and effective action to prevent harm to others if Blodgett walked away from the facility, failed to take his medication or encountered additional stress. Merely documenting the failure to take medication and seeking psychiatric input does not amount to a plan of action that would adequately protect the public. We conclude the record supports the trial court's determination.

Finally, Blodgett argues that the trial court evinced an erroneous understanding of the law when it commented that § 971.17(3), STATS., requires the court to determine whether to grant conditional discharge without having a

specific plan in mind. The trial court's comments reflect its disapproval of the law, not a misunderstanding of the law.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.