**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**December 28, 2005**

**Cornelia G. Clark**
**Clerk of Court of Appeals**



**Appeal No. 2005AP564** **Cir. Ct. No. 1998CI12**

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

---

**IN RE THE COMMITMENT OF KENNETH R. PARRISH:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**KENNETH R. PARRISH,**

**RESPONDENT-APPELLANT.**

---

APPEAL from an order of the circuit court for Milwaukee County: DAVID A. HANSHER, Judge. *Affirmed*.

Before Wedemeyer, P.J., Curley and Kessler, JJ.

¶1 WEDEMEYER, P.J. Kenneth R. Parrish appeals *pro se* from an order denying his postconvicton motion. He claims the trial court erred in denying

his motion, which asserted that WIS. STAT. ch. 980 (2003-04)[1] was unconstitutional as applied to African-Americans in Milwaukee County and that he should be entitled to a jury trial at each recommitment level. Because the trial court did not err in denying his motion, we affirm.

## BACKGROUND

¶2 On June 20, 2000, following a bench trial, Parrish was found to be a sexually violent person under WIS. STAT. § 980.05 and was committed to institutional care in the custody of the Department of Health and Family Services. We affirmed his direct appeal. *See* ***State v. Parrish***, 2002 WI App 263, 258 Wis. 2d 521, 654 N.W.2d 273.

¶3 On August 12, 2003, Parrish filed a petition seeking discharge from his commitment pursuant to WIS. STAT. § 980.09. On May 26, 2004, a reexamination report, prepared under WIS. STAT. § 980.07, was filed with the trial court. The report concluded that Parrish was still a sexually violent person and recommended that he not be discharged at that time. Dr. Lori Pierquet of the Department of Health and Family Services prepared the report.

¶4 A probable cause hearing was conducted on October 8, 2004, wherein the trial court ruled there was no basis for a discharge hearing based on the reexamination. On October 15, 2004, Parrish filed a notice of appeal, a combined withdrawal of the notice of appeal and motion to find ch. 980 unconstitutional, and a petition seeking discharge. On December 2, 2004, the

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

court denied Parrish's motions on the constitutionality of ch. 980 and found there was no probable cause to hold a discharge hearing as he was still a sexually violent person. Parrish filed another petition seeking discharge on December 17, 2004, which was again denied.

¶5 On January 4, 2005, Parrish filed motions seeking summary judgment and an order vacating his commitment. These motions were denied on January 7, 2005. On February 10, 2005, Parrish filed a petition for discharge and a motion to declare the procedures unconstitutional as applied to African-Americans in Milwaukee County. The trial court denied the petition and motion. Parrish now appeals.

DISCUSSION

¶6 Parrish's *pro se* brief is difficult to decipher. We interpret his complaints to assert three claims: (1) WIS. STAT. ch. 980 is unconstitutional as applied to African-Americans in Milwaukee County; (2) that he should have been afforded a discharge hearing; and (3) the paper review violates his constitutional rights. We reject all three arguments.

¶7 WISCONSIN STAT. § 980.09(2)(a) sets forth the law with regard to a petition seeking discharge from a ch. 980 commitment, without the secretary's approval or when a person declines to waive the right to a discharge trial at the time of their annual reexamination under WIS. STAT. § 980.07. The statute requires the trial court to conduct a "probable cause hearing to determine whether facts exist that warrant a hearing on whether the person is still a sexually violent person." Sec. 980.09(2)(a). Case law interpreting the statute involved in this case provides that the probable cause hearing consists of "a paper review of the reexamination report(s) with argument that provides an opportunity for the

committing court to weed out frivolous petitions ...." ***State v. Paulick***, 213 Wis. 2d 432, 438-39, 570 N.W.2d 626 (Ct. App. 1997).

¶8 WISCONSIN STAT. § 980.10 provides that if a person previously filed a petition, which was denied because it was frivolous or because the person was still a sexually violent person, then the court "shall deny any subsequent petition under this section without a hearing unless the petition contains facts upon which a court could find that the condition of the person had so changed that a hearing was warranted."

*A. Constitutionality.*

¶9 Parrish argues that the procedures in the statutes governing ch. 980 cases are unconstitutional as applied to African-Americans in Milwaukee County. His argument is meritless because he does not explain how the statute discriminates against African-Americans and otherwise violates their constitutional rights.

¶10 A challenge to the due process and equal protection procedures as unconstitutional was decided in favor of constitutionality in ***State v. Post***, 197 Wis. 2d 279, 541 N.W.2d 115 (1995). Thus, ***Post*** controls the issue Parrish raises here. The statutes are constitutionally sound. Thus, we summarily reject Parrish's constitutional claims.

*B. Discharge Hearing.*

¶11 We also conclude that the statutory procedures referred to above operate to bar Parrish's claims that the trial court should have conducted a discharge hearing. The record reflects that between August 12, 2003, and February 10, 2005, Parrish filed four to six petitions seeking discharge, and also

triggered a "default" petition by failing to waive his right to a hearing following a reexamination. Three of the petitions were filed in the four months between October 15, 2004, and February 10, 2005. None of these petitions alleged any facts for a court to find that he was no longer suffering from a requisite mental disorder or that he was no longer substantially probable to re-offend. Thus, the trial court did not err in acting as the gatekeeper here in summarily denying Parrish's most recent filings. Parrish's petition/motion did not assert that his condition had changed so as to warrant a hearing. Rather, this was simply another petition in a series of filings, which was rightfully denied as frivolous by the trial court.

*C. Paper Review.*

¶12 Parrish contends that the procedure wherein the trial court conducts a paper review of the reexamination reports in order to determine whether to hold a discharge hearing is unconstitutional in that it violates his rights to confront witnesses. We reject his argument.

¶13 The confrontation clause in both the United States and Wisconsin Constitutions affords a defendant in a criminal proceeding with the opportunity to confront witnesses against him. *See* U.S. CONST., amend. VI; WIS. CONST., art. I, § 7. WISCONSIN STAT. ch. 980 is a civil proceeding and affords ch. 980 respondents constitutional rights available to criminal defendants only as provided by WIS. STAT. § 980.05(1m). *See* ***State v. Curiel***, 227 Wis. 2d 389, 417, 597 N.W.2d 697 (1999). This section applies only to the trial of the petition. Therefore, Parrish was entitled to assert his confrontation rights only at his trial on the commitment petition. That right does not extend to subsequent proceedings under ch. 980. There is no basis to extend the confrontation clause to a court's

review of psychological reports and records for the purpose of determining whether to conduct a discharge hearing, which is a civil commitment proceeding.

*By the Court*.—Order affirmed.

Not recommended for publication in the official reports.