

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 9, 2006**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2005AP673**

**Cir. Ct. No. 1996CF963471**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**IN RE THE COMMITMENT OF MARCELLOUS WALKER:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**MARCELLOUS WALKER,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
KAREN E. CHRISTENSON, Judge. *Affirmed.*

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

¶1 PER CURIAM. Marcellous Walker appeals, *pro se*, from an order denying his petition for discharge from his Chapter 980 commitment. His claim is based on the assertion that the court improperly denied him the right to a jury trial,

that the State failed to establish probable cause for purposes of confinement under WIS. STAT. § 980.07 (2003-04),<sup>1</sup> and that the court's reliance on § 980.07 violates his constitutional right to confrontation. Because he is not entitled to a jury trial, because the State did have probable cause under § 980.07, and because § 980.07 does not violate his right to confrontation, we affirm.

### BACKGROUND

¶2 On April 24, 1997, Walker was committed as a sexually violent person pursuant to Chapter 980. The State filed a Chapter 980 petition upon Walker's discharge from his juvenile adjudication, even though Walker was also serving an adult criminal sentence. Upon completion of his adult sentence, Walker's custody was transferred to the Department of Health and Family Services (DHFS) to begin his Chapter 980 commitment.

¶3 Since his transfer to the custody of the DHFS in December 2002, the department has filed three re-examination reports in accordance with WIS. STAT. § 980.07. Each of these re-examination reports concluded that Walker remained a sexually violent person and that he had not reduced his dangerousness or abated his mental disorder through treatment, and that a substantial probability exists that Walker will commit future acts of sexual violence. In reply to these reports, Walker has filed no reports and has subsequently waived his right to an independent examination.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

¶4 The circuit court held a probable cause paper review on Walker’s petition for discharge on February 2, 2005.<sup>2</sup> The court determined that there was no probable cause to conduct an evidentiary hearing or a jury trial on the petition for discharge. On February 21, 2005, the circuit court denied Walker’s motion to declare WIS. STAT. ch. 980 unconstitutional as applied against African-Americans, and his motion to declare his continued confinement unconstitutional. It is this order from which Walker appeals in this case.

## DISCUSSION

### *A. Probable cause exists to believe Walker remains a sexually violent person.*

¶5 At a probable cause hearing, the trial court is to determine whether “facts exist that warrant a hearing on whether the committed person is a sexually violent person.” *State v. Paulick*, 213 Wis. 2d 432, 434, 570 N.W.2d 626 (Ct. App. 1997). A full evidentiary hearing is not warranted if the only evidence before the trial court indicates that the grounds for the original commitment remain current and relevant. See *State v. Thayer*, 2001 WI App 51, ¶17, 241 Wis. 2d 417, 626 N.W.2d 811.

¶6 A petition for discharge may be denied by the circuit court without a full evidentiary hearing if it determines that no probable cause exists to believe that the committed person is no longer a sexually violent person. *Paulick*, 213 Wis. 2d at 438-39. At a probable cause hearing, the petitioner does not have the burden of persuasion, but the petitioner must present *some* evidence that she or he

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<sup>2</sup> According to CCAP notations, at this hearing the circuit court strongly encouraged Walker to accept legal representation, but he refused.

is no longer a sexually violent person under Chapter 980. *Thayer*, 241 Wis. 2d 417, ¶28. Also, a probable cause hearing is limited to a paper review of any re-examination reports submitted to the court pursuant to WIS. STAT. § 980.07. The question at the probable cause hearing is whether probable cause exists that a person is no longer sexually violent. *State v. Schiller*, 2003 WI App 195, ¶9, 266 Wis. 2d 992, 669 N.W.2d 747.

¶7 We agree with the trial court that Walker has failed to present even *some* evidence to establish that he is no longer a sexually violent person under Chapter 980. Besides his bald assertions, Walker has not presented the court with any evidence to refute the State's multiple reports that establish that Walker remains a sexually violent person under Chapter 980. Thus, we conclude it was proper for the circuit court to deny Walker's petition for discharge without a jury trial.

¶8 Walker also argues that because his diagnoses have changed since his commitment, the State no longer has probable cause and he is entitled to a full evidentiary hearing on his petition for discharge. Walker alleges his diagnoses have changed, but he does not allege they have changed to the point where he is no longer a sexually violent person. Therefore, he provides no basis to suggest that he should no longer be committed under Chapter 980.

*B. Confrontation clause not applicable to Paulick review.*

¶9 The confrontation clause, found in both the Sixth Amendment of the United States Constitution and the Wisconsin Constitution article I, section 7 provides that in criminal proceedings, a person is entitled to confront witnesses against him. Chapter 980 cases, however, are *civil* proceedings and the constitutional rights available to criminal defendants at trial are only made

available to Chapter 980 respondents as provided by WIS. STAT. § 980.05(1m). *State v. Curial*, 227 Wis. 2d 389, 417, 597 N.W.2d 697 (1999). The statutory grant applies only to the commitment trial.

¶10 Walker's assertion that the confrontation clause should apply to the *Paulick* review under WIS. STAT. § 980.09(2)(a) is without merit. Walker has failed to provide the court with a logical reason to extend the confrontation clause in this instance. Thus, there is no basis to extend the confrontation clause to the court's review of psychological reports to determine whether sufficient facts exist to warrant a trial on the petition seeking discharge.

¶11 Based on the foregoing, we reject Walker's claims and affirm the order of the trial court.<sup>3</sup>

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

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<sup>3</sup> Walker's brief failed to comply with the most basic citation requirements of WIS. STAT. § 809.19(1)(e). Under *Lechner v. Scharrer*, 145 Wis. 2d 667, 676, 429 N.W.2d 491 (Ct. App. 1988), this court was not required to consider the merits of the case. However, we chose to address the merits for finality purposes.

