

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 22, 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. 2005AP672

Cir. Ct. No. 1996CF961629

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN RE THE COMMITMENT OF DARRELL A. MORROW:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

DARRELL AFERON MORROW,

RESPONDENT-APPELLANT.

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

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

¶1 PER CURIAM. Darrell Morrow appeals from a post-commitment order that denied his petition for discharge. He argues that his continual

confinement under WIS. STAT. ch. 980 violates both the Wisconsin and the United States Constitutions. We disagree, and we affirm.

¶2 After a trial in 1996, Morrow was found to be a sexually violent person under WIS. STAT. ch. 980. Between 1997 and 2004, Morrow underwent a series of re-examinations, as well as an examination for supervised release. All of these resulted in his continued confinement. During this time, he also underwent competency examinations, as a result of which he was found to be competent.

¶3 In 2004, Morrow, by counsel, filed a motion to have WIS. STAT. ch. 980 declared unconstitutional. The court denied the motion and Morrow did not appeal. In November 2004, the court found that there was not probable cause to believe that Morrow was no longer a sexually violent person, and he remains committed.

¶4 In February 2005, Morrow, acting *pro se*, filed a petition for discharge, or in the alternative, a petition to find WIS. STAT. §§ 980.07, 980.09, and 980.10 to be unconstitutional. These sections concern a paper review by the court of the re-examination reports, as well as discharge proceedings. The court denied the motion, and it is from this order that Morrow now appeals.

¶5 Although his arguments are difficult to discern, Morrow's first issue appears to be that his paper review proceedings were unconstitutional. This issue is the same issue he raised in his 2004 motion to the circuit court. He did not appeal that order. Issue preclusion prevents a plaintiff from relitigating an issue decided in a prior action. *State v. Sorenson*, 2001 WI App 251, ¶¶1-2, 248 Wis. 2d 237, 635 N.W.2d 787, *aff'd as modified*, 2002 WI 78, 254 Wis. 2d 54, 646 N.W.2d 354. Hence, Morrow is precluded from relitigating this issue. Further, this court

has already decided that the paper review process passes constitutional muster. *See State v. Paulick*, 213 Wis. 2d 432, 438-39, 570 N.W.2d 626 (Ct. App. 1997).

¶6 The second issue Morrow raises is even more difficult to discern, but it appears to be that he is entitled to an evidentiary hearing. He is incorrect. Because the court did not find probable cause to conclude that he was no longer a sexually violent person, he is not entitled to an evidentiary hearing on his discharge petition. WISCONSIN STAT. § 980.09(2)(a) effectively requires the committed person “to present some evidence that there is a real question as to whether he or she is still dangerous.” *State v. Thayer*, 2001 WI App 51, ¶28, 241 Wis. 2d 417, 626 N.W.2d 811. The only evidence before the circuit court indicated that the grounds for the original commitment remained current and valid. Consequently, he was not entitled to a hearing on the petition. For the reasons stated, the order is affirmed.

By the Court.—Order affirmed.

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

