

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 10, 2002

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. 01-1370

Cir. Ct. No. 00-CI-1

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE COMMITMENT OF KEITH D. HEACOX:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

KEITH D. HEACOX,

RESPONDENT-APPELLANT.

APPEAL from a judgment and orders of the circuit court for Barron County: EDWARD R. BRUNNER, Judge. *Affirmed.*

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

¶1 PETERSON, J. Keith Heacox appeals a judgment finding him a sexually violent person, an order committing him to institutional care pursuant to

WIS. STAT. ch. 980,¹ and an order denying his motion for post-trial relief. Heacox argues (1) schizophrenia is not a mental disorder that predisposes a person to engage in acts of sexual violence; (2) ch. 980 violates due process because it does not require a separate finding of serious difficulty in controlling behavior; (3) the jury instructions misled the jury and violated his due process rights; and (4) changes to ch. 980 violate equal protection. We conclude that a new trial is not warranted under issue one. Further, we determine issues two and three are controlled by our supreme court's decision in *State v. Laxton*, 2002 WI 82, 254 Wis. 2d 185, 647 N.W.2d 784, and reject both arguments. Finally, we reject Heacox's claim under issue four because it is controlled by our decision in *State v. Williams*, 2001 WI App 263, 249 Wis. 2d 1, 637 N.W.2d 791. Accordingly, we affirm the trial court's judgment and orders.

BACKGROUND

¶2 The State sought to commit Heacox pursuant to WIS. STAT. ch. 980 in October 2000. At trial, psychologist Debra Anderson testified that Heacox suffered from paraphilia, not otherwise specified, and schizophrenia, undifferentiated type. Anderson noted that schizophrenia alone would not suggest that Heacox would act out sexually. However, she stated that schizophrenia in combination with paraphilia led her to conclude to a reasonable certainty that Heacox was substantially likely to violently sexually reoffend as a result of these disorders.

¶3 Another doctor, Caton Roberts, testified that although schizophrenia is not a sexual disorder, untreated schizophrenia makes the treatment of a sexual

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

disorder more difficult, and increases the level of risk. However, he stated that he could not form an opinion as to whether there was a substantial risk Heacox would sexually reoffend.

¶4 The jury found Heacox to be a sexually violent person and the court ordered his commitment. Heacox brought a post-trial motion challenging the sufficiency of the evidence. The court denied Heacox's motion and he now appeals.

DISCUSSION

I. Qualifying Mental Disorder

¶5 Heacox argues that the issue of whether he had a qualifying mental disorder was not fully tried because schizophrenia does not predispose a person to sexually violently reoffend. Heacox requests a new trial in the interest of justice.

¶6 WISCONSIN STAT. § 752.35 allows us to reverse a trial court's judgment if we conclude either (1) the real controversy has not been fully tried, or (2) it is probable that justice has miscarried. Heacox relies on the fully-tried prong. A controversy has not been fully tried when either (1) the jury was not given the opportunity to hear important testimony that bore on an important issue in the case, or (2) the jury had before it testimony or evidence that was improperly admitted and therefore obstructed a critical issue and prevented the real controversy from being fully tried. *State v. Schumacher*, 144 Wis. 2d 388, 400, 424 N.W.2d 672 (1988). Heacox has not shown either of these two things. He does not claim that the jury was not given the opportunity to hear important testimony or that any of the expert testimony was improperly admitted.

¶7 The jury's verdict and the court's order were not based solely on Heacox's diagnosis of schizophrenia. Instead, the expert testimony was that the schizophrenia *in combination* with paraphilia predisposed him to sexual violence. In *State v. Matthew A.B.*, 231 Wis. 2d 688, 711, 605 N.W.2d 598 (Ct. App. 1999), we determined that even when a diagnosis standing alone may not lead to a finding that a defendant is a sexually violent person, that condition in combination with evidence satisfying WIS. STAT. § 980.01(7) may support such a finding. That is the case here. Heacox has failed to persuade us that a reversal in the interest of justice is warranted.

II. Due Process

¶8 Heacox claims that WIS. STAT. ch. 980 violates due process because it does not require a separate finding that the person being committed has substantial difficulty controlling his or her behavior. He argues this finding is required by the United States Supreme Court's decision in *Kansas v. Crane*, 534 U.S. 407 (2002), where the Court considered Kansas' sexually violent persons' commitment statute. In *Crane*, the Court concluded due process requires a finding that persons being committed have a serious inability to control their behavior. *Id.* at 412-13.

¶9 Our supreme court's decision in *Laxton* controls our resolution of this issue. In *Laxton*, the court determined WIS. STAT. ch. 980 satisfied the due process requirements of *Crane*. *Laxton*, 2002 WI 82 at ¶¶22-23. The court said ch. 980's requirement of proving a nexus between the mental disorder and an individual's dangerousness implicitly involves proof that the person has serious difficulty controlling his or her behavior. *Id.* The court specifically determined ch.

980 does not require a separate finding of the person's inability to control his or her behavior. *Id.* at ¶2. Consequently, we reject Heacox's claim.

III. Jury Instruction

¶10 *Laxton* also controls Heacox's claim that the jury instruction given in his case misstated the law and violated his due process rights. The court gave the pattern jury instruction regarding the commitment of sexually violent persons, WIS JI—CRIMINAL 2502. Heacox argues this instruction did not properly reflect the United States Supreme Court's decision in *Crane*. Our supreme court, however, rejected the same argument in *Laxton*, concluding the jury instruction accurately tracked the statute and because the statute complied with due process, the jury instruction was proper. *Id.* at ¶27.

IV. Equal Protection

¶11 Finally, Heacox argues the legislature's changes to WIS. STAT. ch. 980 by 1999 Wis. Act 9 violate his right to equal protection. Among these changes is a requirement that persons committed under ch. 980 be institutionalized and not be allowed to petition for release for at least eighteen months. Heacox claims this violates his right to equal protection because persons committed under other procedures, such as WIS. STAT. ch. 51, are not subject to the same restrictions.

¶12 Heacox acknowledges we rejected these arguments in *Williams*. At the time he filed his brief, however, the supreme court was considering a petition for review in *Williams*. The supreme court has since denied the petition. Consequently, we reject Heacox's equal protection argument.

By the Court.—Judgment and orders affirmed.

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