

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 25, 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. 01-2893**

**Cir. Ct. No. 00-CI-3**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**IN RE THE COMMITMENT OF STEVEN J. ARTHUR:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**STEVEN J. ARTHUR,**

**RESPONDENT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Dane County: STEVEN D. EBERT, Judge. *Affirmed.*

Before Dykman, Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Steven J. Arthur appeals a judgment and an order finding him a sexually violent person pursuant to WIS. STAT. ch. 980. Arthur argues that the circuit court erred in excluding expert testimony regarding his

possible conditions of release on parole. We conclude that evidence regarding a ch. 980 respondent's possible conditions of release is not relevant to the determination of whether the respondent has a mental disease or disorder which makes it substantially probable that he will reoffend. We therefore affirm the circuit court's judgment and commitment order for Arthur as a sexually violent person.

¶2 In 1994, Arthur was convicted and imprisoned for nine years for the sexual assaults of his stepdaughter and nephew. Six days before his scheduled release, the State petitioned for his commitment as a sexually violent person under ch. 980. Prior to trial, the State filed a motion *in limine* to exclude expert testimony proffered by Arthur pertaining to conditions for Arthur's release. The State argued that the evidence was not relevant because it did not tend to make the existence of a mental disease or disorder that causes it to be substantially probable that Arthur will reoffend any more or less probable. The circuit court excluded the evidence, and the jury found that Arthur is a sexually violent person.

¶3 Arthur argues that the circuit court erroneously exercised its discretion in excluding testimony about the potential conditions for Arthur's release. First, Arthur argues that the circuit court failed to apply the proper legal standard in its ruling because it did not specify under which portion of the definition of relevance set forth in WIS. STAT. § 904.01 (1999-2000)<sup>1</sup> the proffered evidence failed. Second, Arthur argues that the excluded evidence was relevant

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

because his conditions of release would affect the availability of victims, which would impact on his likelihood to reoffend.

¶4 The State responds that the evidence was properly excluded because it was irrelevant. The State agrees with the circuit court that evidence of conditions of release would be relevant at a hearing on a post-commitment petition for supervised released, *see* WIS. STAT. § 980.08, but that such evidence is not relevant at a trial to determine if the person is sexually dangerous.

¶5 Evidentiary decisions are discretionary with the circuit court. *State v. Evans*, 187 Wis. 2d 66, 77, 522 N.W.2d 554 (Ct. App. 1994). This court will uphold a circuit court's decision to admit or exclude evidence if the circuit court examined the relevant facts, applied the proper legal standard to those facts, and used a rational process to reach a conclusion that a reasonable judge could reach. *State v. Sullivan*, 216 Wis. 2d 768, 780-81, 576 N.W.2d 30 (1998).

¶6 The excluded evidence was the following portion of the expert's testimony:

Assessment of risk of future sexual assaultiveness need occur within a context. For example, someone is more likely to assault children if they have access to children than if no opportunities for contact exist.

If Mr. Arthur is not committed under WSS 980 as a result of this legal process, at a minimum he will be under probation supervision until October, 2018 when he will be 64 years of age. A Supervision Plan exists which will have him reside at Foster halfway house for between 3 months and up to a year, have him electronically monitored initially, be overseen by the Sex Offender Intensive Supervision Program, have to comply with various relevant rules of parole (e.g., no contact with children, no alcohol consumption, etc.) and have to participate in Sex Offender Treatment by a provider in the community. Supervision would occur at least weekly through planned and unannounced meetings.

Within the context of how Mr. Arthur procures and sexually assaults victims, this supervision should reduce his risk of sexual assaultiveness as long as he is supervised. Additionally, he will be participating in treatment that may benefit him and lessen the risk he poses. The Judge in the Sentencing transcript from 91-cf-263 has withheld sentencing on one conviction, and placed Mr. Arthur on probation for a 15-year period consecutive to any other prison/parole time. Mr. Arthur would first be unsupervised in October 2018 when he will be 64 years of age. I suspect any remaining problems in this area would be addressed in the intervening period of supervision. While it is unfortunate that Mr. Arthur has been unwilling to reveal his sex offending history until yesterday, the Attic should be able to work with him if he is as open as he was with this examiner.

Finally, Mr. Arthur's victims of sexual assault have primarily been family members. An offender works in secrecy and Mr. Arthur's "cover" has been exposed. He is unlikely to have access to children as readily in the future.

¶7 The laws at issue are WIS. STAT. § 904.01, which defines relevance, and WIS. STAT. § 980.05(1). Under § 904.01, relevant evidence is any evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable. The fact of consequence at a ch. 980 trial is whether the respondent is a sexually violent person. *See* § 980.05(1). A "sexually violent person" is defined in WIS. STAT. § 980.01(7) as "a person who has been convicted of a sexually violent offense ... and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence."

¶8 The core of Arthur's argument is that his expert's testimony showed that if he were placed in supervised release, he would not be sexually dangerous. However, the question addressed at Arthur's trial was whether he suffers from a mental disorder that makes it substantially probable that he will engage in acts of sexual violence. It was not whether there are conditions under which Arthur's

mental disorder would make him less dangerous. To conclude otherwise would permit a person with a mental disorder such as Arthur's to have conditions of parole consistent with conditions for supervised release, yet he could not obtain supervised release under ch. 980 after the initial hearing. See *State v. Rachel*, 202 WI 81, ¶14, No. 00-0467. Therefore, testimony about how Arthur may behave under parole conditions which are essentially the same as conditions for supervised release under ch. 980 is not relevant to the initial determination of whether he has a mental disease or defect that makes it substantially probable that the person will engage in acts of sexual violence.

¶9 Because the fact of consequence to be determined at the trial is limited to whether the person has a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence, possible conditions of release on parole do not have any tendency to make the existence of a fact of consequence more or less probable. Therefore, we conclude the circuit court properly exercised its discretion when it excluded as irrelevant Arthur's expert's testimony concerning conditions of release.

*By the Court.*—Judgment and order affirmed.

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

