COURT OF APPEALS DECISION DATED AND FILED

January 30, 2003

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. 01-3059

Cir. Ct. No. 99-CI-1

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

IN RE THE COMMITMENT OF DAVID J. PETTIT:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

DAVID J. PETTIT,

RESPONDENT-APPELLANT.

APPEAL from a judgment and order of the circuit court for Grant County: GEORGE S. CURRY, Judge. *Affirmed.*

Before Dykman, Deininger and Lundsten, JJ.

¶1 PER CURIAM. David Pettit appeals from a judgment and order committing him as a sexually violent person. The issue is whether the State's

initial petition gave the trial court competency to proceed with the matter. We conclude that it did, and therefore affirm.

¶2 Pettit served a prison term for second-degree sexual assault from 1988 until his mandatory release date of November 28, 1999. On November 19, 1999, the State filed a WIS. STAT. ch. 980 petition. The allegations in the petition relied on the evaluation and opinion of Dr. Rick McKee, a psychologist. However, the State subsequently learned that Dr. McKee had considered information from Pettit's presentence investigation report, which he was not permitted to read without the trial court's authorization. *See* ***State v. Zanelli***, 212 Wis. 2d 358, 378, 569 N.W.2d 301 (Ct. App. 1997). Consequently, the State filed an amended petition a few weeks after Pettit's release, which relied on the opinion and conclusions of an expert who had not seen the presentence report.

¶3 The trial court subsequently denied Pettit's motion to dismiss, and Pettit was eventually committed under WIS. STAT. ch. 980. On appeal he contends that because the original petition was "defective," and the amended petition not filed until after his release, the court never gained competency to proceed with the commitment.

¶4 Failure to comply with a statutory mandate may deprive the trial court of competency to hear a specific case. ***State v. Bollig***, 222 Wis. 2d 558, 565, 587 N.W.2d 908 (Ct. App. 1998). In order to give the trial court competency to proceed with a WIS. STAT. ch. 980 action, the petition must allege a specific set of facts, and do so with particularity. WIS. STAT. §§ 980.02(2) and (3) (1999-2000).[1]

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

Whether the petition was sufficient to convey competency is a question of law that we review *de novo*. *See* ***State v. Pharm***, 2000 WI App 167, ¶11, 238 Wis. 2d 97, 617 N.W.2d 163.

¶5 Pettit's argument fails because the original petition was not subject to dismissal for its reliance on Dr. McKee's "tainted" evaluation. The petition undisputedly met the statutory criteria for content, and it was undisputedly filed in a timely manner. Nothing more was needed. The sufficiency of a civil pleading, as this admittedly was, is established solely by examining its content. *See* ***State ex rel. Christie v. Husz***, 217 Wis. 2d 593, 598, 579 N.W.2d 243 (Ct. App. 1998) (On motion to dismiss petition, its allegations are deemed admitted and the court determines sufficiency solely within the four corners of the petition.). The source of the allegations in the State's petition was simply not relevant to its sufficiency as the initial pleading in this matter. It conveyed competency to proceed, regardless of this collateral problem.

¶6 Because the original petition was sufficient to establish the court's competency, we need not address whether the subsequent amendment cured its "defect."

By the Court.—Judgment and order affirmed.

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