

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 29, 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. 02-2722-CR
STATE OF WISCONSIN**

Cir. Ct. No. 98-CF-59

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JOHN A. WOOD,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for La Crosse County:
MICHAEL J. MULROY, Judge. *Affirmed.*

Before Dykman, Roggensack and Deininger, JJ.

¶1 PER CURIAM. John Wood appeals from an order denying his petition for release from an NGI commitment. The issue is whether the State satisfied its burden of proving by clear and convincing evidence that Wood posed a significant risk of bodily harm to others if conditionally released. We affirm.

¶2 In 1978 Wood committed a murder and was found not guilty of second-degree intentional homicide by reason of mental disease. He was committed to an institution, where he remained until 1991. In 1998, during a temporary hospitalization, he sexually assaulted a female patient. During the subsequent prosecution for second-degree sexual assault Wood was again found not guilty by reason of mental disease. He was found to pose a significant risk of bodily harm to others, and again institutionally committed.

¶3 After three prior unsuccessful petitions for supervised release, Wood filed his fourth petition in February 2002. In March, Dr. David Van Dyke, a psychiatrist, examined Wood. He reported that Wood was little changed from a previous exam Dr. Van Dyke conducted in July 2001. He characterized Wood as follows:

He presents as pleasant and cooperative initially. He is oriented and there are no cognitive difficulties. However, the longer he talks the more it becomes clear that he continues to have very minimal insight into his delusional thought processes, his denial, and he has rationalizations for all of his behaviors.

Dr. Van Dyke also noted two recent incidents when Wood wrote to distant female acquaintances asking for money. The report concluded:

Staff see [Wood] as in denial about his crime and the connection with his mental illness and significantly undertreated regarding his medications. He has been adamant, however, that the current amount of medication is sufficient and he won't allow any increase.

Diagnostically, John continues to present with schizophrenia, paranoid type and I concur with the treatment facility that he is undertreated at this time. Because of his paranoia and history of committing crimes against persons when his mental illness is not controlled, I think that John is not appropriate for release into the community. My opinion would be that John has regressed since I saw him last July.

¶4 Also in evidence was the WIS. STAT. ch. 980 assessment of Wood conducted by Michael Hammer, a psychologist. Dr. Hammer agreed that Wood suffered from paranoid schizophrenia, but concluded that Wood did not meet the criteria for a ch. 980 commitment as a sexually violent person.

¶5 On review of the reports, and after a hearing at which Dr. Van Dyke testified, the trial court concluded that the State had met its burden of proof. The court recognized that Wood had not demonstrated dangerous conduct since his last review, but noted his confinement in a controlled, closely monitored institutional setting during that time. Consequently, the court placed more weight on Dr. Van Dyke's conclusions, coupled with Wood's violent history, than on his recent generally acceptable conduct. In this appeal, Wood challenges the evidentiary basis of the trial court's conclusion.

¶6 The court must grant a petition for supervised release

[U]nless it finds by clear and convincing evidence that the person would pose a significant risk of bodily harm to himself or herself or to others or of serious property damage if conditionally released. In making this determination, the court may consider, without limitation because of enumeration, the nature and circumstances of the crime, the person's mental history and present mental condition, where the person will live, how the person will support himself or herself, what arrangements are available to insure that the person has access to and will take necessary medication, and what arrangements are possible for treatment beyond the medication.

WIS. STAT. § 971.17(4)(d) (2001-02).¹ We review the trial court's determination on this issue for an erroneous exercise of discretion. *State v. Cook*, 66 Wis. 2d 25,

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

27-28, 224 N.W.2d 194 (1974) (whether facts support release from a WIS. STAT. § 971.17 commitment under prior statutory standard is discretionary); *State v. Seibert*, 220 Wis. 2d 308, 314, 582 N.W.2d 745 (Ct. App. 1998) (decision to grant supervised release from a sexual predator commitment is discretionary). We affirm discretionary decisions if the trial court applied the correct law to the relevant facts and reached a reasonable result through a rational process. *Gosse v. Navistar Int'l Transp. Corp.*, 2000 WI App 8, ¶16, 232 Wis. 2d 163, 605 N.W.2d 896.

¶7 The trial court reasonably concluded that clear and convincing evidence showed that Wood's release posed a significant risk of bodily harm to others. Wood's record included a homicide and a sexual assault. He was still afflicted with the mental disease that prompted those violent acts. Furthermore, by his own choice he was not sufficiently medicated to control his disease. Wood continued to have "very minimal insight into his delusional thought processes." Given those circumstances, the trial court reasonably concluded that Wood's relatively benign behavior in confinement did not necessarily demonstrate that he would not pose a significant risk to others if released. It was also within the trial court's discretion to give little weight to Dr. Hammer's opinion. Dr. Hammer evaluated Wood solely for the purpose of determining whether he was a sexually violent person, subject to commitment under WIS. STAT. ch. 980. The standard in ch. 980 proceedings is whether it was "substantially probable" that Wood would engage in acts of sexual violence if released. WIS. STAT. § 980.01(7). The different standard here is whether Wood posed a significant risk of committing any type of bodily harm to others if released.

By the Court.—Order affirmed.

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

