

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 13, 2005

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. 03-3042
STATE OF WISCONSIN**

Cir. Ct. No. 96CF000231

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE COMMITMENT OF MICHAEL E. CARTER:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

MICHAEL E. CARTER,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Monroe County:
STEVEN L. ABBOTT, Judge. *Affirmed.*

Before Dykman, Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Michael Carter appeals an order revoking his supervised release on a WIS. STAT. ch. 980 (2003-04)¹ commitment. He claims he was improperly apprehended by Wisconsin authorities outside the boundaries of the state without formal extradition procedures and that the Department of Health and Family Services and/or circuit court should have considered alternatives to revocation. We reject Carter's claims for the reasons discussed below and affirm.

BACKGROUND

¶2 Carter was found to be a sexually violent person and committed to institutional care in 1997. He was granted supervised release in 2002 but absconded shortly thereafter. The circuit court issued a capias warrant for Carter's arrest, and Carter was eventually apprehended in Minnesota. Carter filed a motion challenging his detention which the circuit court denied, treating the matter as analogous to an escape under the Mental Health Act. The circuit court further found that Carter had violated the terms of his supervised release and entered a revocation order.

DISCUSSION

¶3 Carter first contends that, because WIS. STAT. § 980.03 grants ch. 980 subjects a number of the procedural protections afforded to criminal defendants, an absconder from supervised release under ch. 980 proceedings should also be entitled to the extradition procedures outlined in WIS. STAT. § 976.03. *See also State v. VanBronkhorst*, 2001 WI App 190, ¶9, 247 Wis. 2d

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

247, 633 N.W.2d 236 (recognizing that the same due process protections apply at supervised release revocation proceedings as at probation or parole revocation proceedings). Although there is no Wisconsin case law addressing the applicability of extradition procedures to ch. 980 revocation proceedings, we conclude that we do not need to address it in the context of this case, because even assuming that WIS. STAT. § 976.03 applies, it would not afford Carter the relief he seeks here.

¶4 Carter argues that the failure to afford him extradition procedures constitutes a due process violation warranting reversal of the revocation order. It is well established, however, that extradition is *not* a due process right of the individual, but rather a sovereign right of the asylum state. *State ex rel. Jones v. Smith*, 2002 WI App 94, ¶9, 253 Wis. 2d 712, 643 N.W.2d 548. Therefore, a person's involuntary removal from another state without proper extradition procedures does not present any constitutional bar to proceedings against the person in this state. *State v. Monje*, 109 Wis. 2d 138, 142-43, 325 N.W.2d 695 (1982). Moreover, under the terms of the extradition act itself, the method to challenge an allegedly improper detention is by a separate habeas corpus action. *See* WIS. STAT. § 976.03(10). Since Carter did not file a separate habeas action and seeks relief which is not available to him, we do not further consider the validity of his detention.

¶5 Carter next contends that less restrictive alternatives to revocation must be expressly considered before a WIS. STAT. ch. 980 subject's supervised release may be revoked. The Wisconsin Supreme Court has recently rejected that argument, however. *State v. Burris*, 2004 WI 91, ¶30, 273 Wis. 2d 294, 682 N.W.2d 812. The court reasoned that a finding that the safety of the public

requires revocation necessarily encompasses a finding that no alternative would be sufficient. *Id.*, ¶40.

By the Court.—Order affirmed.

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

