

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 18, 2011**

A. John Voelker  
Acting 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. 2010AP2258**

**Cir. Ct. No. 1997CI1**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN RE THE COMMITMENT OF JASON R. STAVES:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**JASON R. STAVES,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Chippewa County:  
STEVEN R. CRAY, Judge. *Affirmed.*

Before Hoover, P.J., Peterson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Jason Staves appeals an order denying his petition for supervised release or discharge from his WIS. STAT. ch. 980<sup>1</sup> sexually violent person commitment. Staves argues the State failed to present sufficient evidence to deny his discharge petition.<sup>2</sup> We disagree and affirm.

## BACKGROUND

¶2 Staves pled guilty to two counts of second-degree sexual assault of a child in 1993 and was sentenced to prison. The State later petitioned to commit Staves pursuant to WIS. STAT. § 980.02. In 1999, Staves waived his right to trial and stipulated to a determination that he was a sexually violent person. At that time, he agreed to the following facts: In 1990, Staves entered a sex offender program in Minnesota due to “numerous incidents of sexually inappropriate behavior.” In December 1990, Staves was forced to leave the program because he was caught having anal and oral sex with another male. Staves had intercourse with a fourteen-year-old girl at least twice in December 1992, for which he was convicted of fourth-degree sexual assault. In September 1993, Staves entered *Alford*<sup>3</sup> pleas to a charge of third-degree sexual assault for touching his eight-year-old half sister’s vagina and to a charge of fourth-degree sexual assault for performing oral sex on an eight-year-old boy and forcing the boy to perform oral sex on him. In December 1993, Staves was convicted of two counts of second-degree sexual assault of a thirteen-year-old boy; Staves also engaged in oral sex

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

<sup>2</sup> Staves does not appeal that portion of the order denying his petition for supervised release.

<sup>3</sup> See *North Carolina v. Alford*, 400 U.S. 25 (1970).

with the boy several years earlier. In May 1994, while incarcerated, Staves allegedly engaged in nonconsensual fondling of his cellmate's penis on three separate occasions. In September 1996, Staves falsely accused a female prison guard of masturbating in front of inmates.

¶3 Staves unsuccessfully petitioned for supervised release or discharge multiple times from 2000 through 2009. The most recent denial is the subject of this appeal. At the bench trial, psychologist William Merrick testified for the State, and psychologist Hollida Wakefield testified for Staves. Both psychologists interviewed Staves, reviewed his files, and scored him on actuarial instruments designed to assess the risk of recidivism using static factors such as the number of convictions and the victims' genders.

¶4 One instrument, the RRASOR, is measured on a scale of zero to six, with six representing the highest rate for recidivism. The second, the Static-99, employs a scale ranging from zero to twelve, again with higher numbers corresponding to a higher risk of recidivism. Merrick scored Staves as a five on the RRASOR and an eight on the Static-99, and testified that both scores were in the high risk range. Wakefield, however, scored Staves as a six on the Static-99.

¶5 Merrick testified that use of the actuarial instruments does not tell the entire story of an individual's recidivism risk. Merrick therefore also assessed Staves based on the following five dynamic factors: sexual deviance; the effects of the sexual deviance combined with psychopathy; distorted attitudes; socio-affective functioning; and self-management. A penile plethysmography test demonstrated Staves showed sexual arousal to deviant stimuli with male and female children of various ages. Staves also revealed he had frequent fantasies involving brutally violent sexual deviancy.

¶6 Merrick also evaluated Staves as having a high level of psychopathy. He rated Staves as a twenty-eight on the PCL-R, whereas he stated the general prison population would average twenty to twenty-two. Merrick acknowledged that, depending on the literature, the bottom cutoff for a high rating could be either twenty-five or thirty. Merrick concluded that Staves's elevated level of psychopathy combined with his sexual deviance created an increased risk that Staves would commit a future sexual offense. Wakefield, on the other hand, opined Staves had only an average level of psychopathy—compared to other prisoners, scoring him as a twenty-four.

¶7 Next, Merrick concluded Staves had distorted attitudes regarding women, children, and sex, but was making progress. He also felt Staves had made progress in his socio-affective functioning and self-management. However, Merrick testified Staves had not progressed significantly in his treatment, due to his failure to cooperate. Ultimately, Merrick opined that Staves was dangerous to others because of a mental disorder that makes it more likely than not that he will engage in acts of sexual violence. Wakefield disagreed, and opined that Staves should be allowed supervised release.

## DISCUSSION

¶8 Staves argues the State failed to adduce sufficient evidence, to the clear and convincing evidence standard, that it was more likely than not that he would reoffend. We review the sufficiency of the evidence in a WIS. STAT. ch. 980 discharge proceeding using the same standard applicable to criminal convictions. *See State v. Brown*, 2005 WI 29, ¶46, 279 Wis. 2d 102, 693 N.W.2d 715. Under that standard:

We review the evidence in the light most favorable to the verdict and, if the evidence permits drawing more than one reasonable inference, we draw the one that supports the verdict. The credibility of the witnesses, the weight of the evidence, and resolving inconsistencies in a witness's testimony all are for the trier of fact.

*State v. Bowden*, 2007 WI App 234, ¶14, 306 Wis. 2d 393, 742 N.W.2d 332 (citations omitted).

¶9 In a nutshell, this is Staves's argument:

Dr. Merrick [sic] testimony is simply not credible. His opinions regarding the scoring of the STATIC-99, and the PCL-R, are contrary to all other examiners who have provided opinions regarding those issues between 1997 and 2008. Further, Dr. Merrick presented no credible evidence as to why he was right, and everyone else is wrong.

This argument ignores the applicable standard of review.

¶10 Staves's main focus is the "discrepancy" between the psychologists' respective scores of six and eight on the Static-99 actuarial instrument. Merrick's score of an eight was caused in part by his consideration of the incidents where Staves had fondled his cellmate's genitals, whereas Wakefield excluded those incidents in her scoring of the Static-99. The rules for that instrument indicate that an institutional rule violation is to be considered a sexual offense if the behavior was sufficiently intrusive that a charge for a sexual offense would be possible if the offender was not already under legal sanction and if the evaluator is sure the activity actually occurred and the punishment imposed was for the sexual behavior.

¶11 The circuit court concluded Merrick properly determined that standard was met because Staves admitted he fondled his cellmate's genitals and instructed him not to report the incidents. In fact, Staves admitted he "threatened

his roommate that if he told anyone he would have other inmates beat him up.” Wakefield, however, concluded the incidents were merely “[p]oorly timed or insensitive homosexual advances” that “don’t count” on the actuarial instrument. We reject Staves’s argument that Merrick’s scoring of the Static-99 was incredible and that the circuit court could therefore not reasonably rely on it or Merrick’s opinions. The “discrepancy” between the psychologists’ scores is precisely the type of credibility issue conducive to resolution at trial, and cannot form the basis of an insufficiency argument on appeal.

¶12 Staves further argues that, regardless of which Static-99 score is considered, the State failed to prove he was more likely than not to reoffend because even Merrick’s higher score of an eight corresponds to only a 48.7% recidivism rate within ten years. If the Static-99 score was the sole basis of Merrick’s opinion, we might agree. It was not. As Staves acknowledges, Merrick’s opinion was also based on the RRASOR score; consideration of Staves’s dynamic factors, such as his levels of sexual deviancy and psychopathy; and Staves’s failure to cooperate with treatment.

¶13 Finally, Staves argues Merrick’s determination that Staves had a high level of psychopathy was not credible. Staves emphasizes that Merrick’s score both differed from Wakefield’s credible score and would not be considered high in one view of the cutoff value for high psychopathy. Again, the standard of review mandates that we reject this argument. We do not make credibility assessments on appeal. *See Bowden*, 306 Wis. 2d 393, ¶14.

*By the Court.*—Order affirmed.

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

