

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

August 1, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 93-1885-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

REGINALD YOUNG,

Defendant-Appellant.

APPEAL from an order of the circuit court for Milwaukee County:
ARLENE D. CONNORS, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Reginald L. Young appeals from an order denying his petition for conditional release from a mental health facility, to which he had been committed, after being found not guilty of first-degree intentional homicide because of mental disease or defect. The issue in this case is whether the State can continue to hold an insanity acquittee in a mental health facility without proving that the individual continues to suffer from mental illness. Young claims that in order to continue commitment, the State

must prove *both* that he suffered from a mental illness *and* that he was dangerous. Because a defendant can be kept in the mental health facility, as long as he is considered to be dangerous, and even if he is no longer mentally ill, we affirm.

I. BACKGROUND

Young was charged with one count of first-degree intentional homicide arising out of a shooting that occurred on June 21, 1990. Young pled not guilty and not guilty by reason of mental disease. Young waived his right to a jury trial. During the guilt/innocence phase of the trial, the trial court found him guilty of the charge, but following the responsibility phase, the trial court found him not guilty by reason of mental disease or defect. Young was committed to a mental health facility.

In July 1992, the trial court received Young's petition for conditional release. After a hearing, the trial court found that Young continued to be dangerous and denied his petition for conditional release. Young argued that continuing his commitment solely on the basis that he was dangerous, without also proving that he still suffered from a mental illness, violated his due process rights. He cited *Foucha v. Louisiana*, 504 U.S. 71 (1992), in support of this contention. The trial court ruled that *Foucha* did not apply and rejected his argument. Young now appeals.

II. DISCUSSION

The issue raised in this case was recently decided by *State v. Randall*, ___ Wis.2d ___, 532 N.W.2d 94 (1995). In *Randall*, our supreme court held that "it is not a denial of due process for an insanity acquittee who has committed a criminal act to be confined in a state mental health facility for so long as he or she is considered dangerous, provided that the commitment does not exceed the maximum term of imprisonment which could have been imposed for the offense charged." *Id.* at ___, 532 N.W.2d at 96. Further, the *Randall* court harmonizes *Foucha* with the *Randall* holding:

[W]e read *Foucha* to permit the continued confinement of dangerous but sane acquittees in a mental health facility, so long as they are treated in a manner consistent with the purposes of their commitment, *e.g.*, there must be a medical justification to continue holding a sane but dangerous insanity acquittee in a mental health facility.

*Id.*¹ The *Randall* court further explained that “the [Wisconsin] legislature has determined that the inference of dangerousness drawn from a verdict of not guilty by reason of insanity continues, even after a clinical finding of sanity.” *Id.* Because the Wisconsin statutory scheme provides such comprehensive treatment designed in part to reduce dangerous behavioral disorders, even when clinical signs of mental illness are no longer apparent, continued confinement based solely on dangerousness is consistent with the purpose of commitment. *Id.* at ___, 532 N.W.2d at 96-97. Hence, proof of actual mental illness is not necessary.

In the instant case, it is undisputed that Young was still considered dangerous and that his commitment time has not exceeded the maximum term of imprisonment for first-degree intentional homicide. Accordingly, the trial court did not err in ordering continued confinement.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

¹ In *Foucha v. Louisiana*, 504 U.S. 71 (1992), the United States Supreme Court concluded that the Louisiana statutory scheme, which allowed confinement based on dangerousness alone, was unconstitutional. *Id.* at 83. The basis for the finding, however, was specific to Louisiana's statutory scheme, which provided that an insanity acquittee could be held for an indefinite and unlimited duration until the acquittee could prove, by a preponderance of the evidence, that he or she was no longer dangerous. *Id.* Wisconsin's statutory scheme differs from Louisiana's in two important aspects: (1) the state, rather than the acquittee, bears the burden to prove by clear and convincing evidence that the commitment should continue; and (2) commitment is not for an indefinite period of time, but is limited to the maximum term of imprisonment which could have been imposed for the offenses charged. See *State v. Randall*, ___ Wis.2d ___, ___, 532 N.W.2d 94, 97 (1995).