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**DISTRICT I**

September 4, 2024

To:

Hon. Glenn H. Yamahiro  
Circuit Court Judge  
Electronic Notice

Jennifer L. Vandermeuse  
Electronic Notice

Anna Hodges  
Clerk of Circuit Court  
Milwaukee County Safety Building  
Electronic Notice

Carl Cornelius Gilbert, Jr.  
Sand Ridge Secure Treatment Center  
P.O. Box 800  
Mauston, WI 53948

Dustin C. Haskell  
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

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2022AP850-NM

State of Wisconsin v. Carl Cornelius Gilbert, Jr. (L.C. # 2006CI12)

Before White, C.J., Geenen and Colón, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Carl Cornelius Gilbert, Jr. appeals an order that denied his petition for discharge from a commitment as a sexually violent person under Chapter 980 of the Wisconsin Statutes. Attorney Dustin C. Haskell has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2021-22);<sup>1</sup> *see also Anders v. California*, 386 U.S. 738, 744 (1967), *State ex rel. McCoy v. Wisconsin Ct. of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

U.S. 429 (1988). The no-merit report addresses whether Gilbert was entitled to a trial on his petition. Gilbert was sent a copy of the report and filed a response. Upon reviewing the entire record, as well as the no-merit report and response, we conclude that there are no arguably meritorious appellate issues and affirm the order denying the petition for discharge without a trial.

In February 2008, Gilbert was committed as a sexually violent person under WIS. STAT. ch. 980. We affirmed the commitment on appeal. Over several days in April and May of 2019, the circuit court held a trial on Gilbert’s petition for discharge from commitment. On November 14, 2019, the circuit court denied the petition.

Gilbert filed the petition for discharge underlying this appeal on April 23, 2021. The circuit court held a hearing and then denied the petition without a trial.

“A committed person may petition the committing court for discharge at any time.” WIS. STAT. § 980.09(1). The circuit court “shall deny the petition” without a hearing unless it “alleges facts from which the court or jury would likely conclude the person’s condition has changed since the most recent order denying a petition for discharge after a hearing on the merits ... so that the person no longer meets the criteria for commitment as a sexually violent person.” *Id.* “If the court determines that the record contains facts from which a court or jury would likely conclude the person no longer meets the criteria for commitment, the court shall set the matter for trial.” Sec. 980.09(2).

This court independently reviews the circuit court’s determination as to whether the statutory criteria for a discharge trial have been met. *State v. Hager*, 2018 WI 40, ¶19, 381 Wis. 2d 74, 911 N.W.2d 17; *State v. Talley*, 2017 WI 21, ¶24, 373 Wis. 2d 610, 891 N.W.2d

390. A petition is not sufficient when it “contains the same ultimate conclusion and overall risk assessment a trier of fact previously rejected.” *Talley*, 373 Wis. 2d 610, ¶34. The criteria for commitment under WIS. STAT. ch. 980 require the State to show three things: that the person has been convicted of a sexually violent offense; that the person has a mental disorder; and that the person is dangerous to others because the person’s mental disorder makes it likely that the person will engage in one or more future acts of sexual violence. WIS. STAT. § 980.02(2).

We agree with counsel’s assessment in the no-merit report that the circuit court properly denied Gilbert’s petition without a discharge trial because Gilbert offered no evidence that his condition has changed since his 2019 discharge trial so that a fact-finder would likely conclude that he no longer meets the criteria for commitment. We adopt the analysis set forth in the no-merit report on this issue and we do not discuss it further.

We turn, then, to Gilbert’s no-merit response. Gilbert asserts that his trial counsel was ineffective by failing to communicate with Gilbert, failing to conduct any research, and failing to file any motions.<sup>2</sup> Gilbert also contends that his trial counsel should have challenged the evidence that Gilbert had knowingly written to “mentally ill young men.” Gilbert asserts that, contrary to the evidence before the court, he did not know that the individual to whom he had written was only seventeen years old.

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<sup>2</sup> Gilbert also contends that his prior counsel was ineffective in connection with his 2019 discharge trial. However, this appeal is from the circuit court’s June 2021 order denying Gilbert’s petition for discharge without a trial. Issues arising from the November 2019 final order following Gilbert’s 2019 discharge trial are outside the scope of this appeal. *See* WIS. STAT. RULE 809.10(4) (“An appeal from a final judgment or final order brings before the court all prior nonfinal judgments, orders and rulings adverse to the appellant and favorable to the respondent made in the action or proceeding not previously appealed and ruled upon.”). We therefore address only potential issues arising from the June 2021 order denying Gilbert’s discharge petition without a trial.

We discern no arguable merit to a claim that Gilbert’s trial counsel was ineffective. Trial counsel pursued a discharge petition on Gilbert’s behalf with a supporting report by Dr. Courtney Endres. Gilbert does not explain in what way his counsel was deficient or how he was prejudiced by counsel’s failure to communicate or to pursue any motions. *See Strickland v. Washington*, 466 U.S. 668, 687-94 (1984) (stating that a claim of ineffective assistance of counsel must show that counsel’s performance was deficient and prejudiced the defense).

At the petition hearing, the circuit court stated as part of its review of the material:

Dr. Endres acknowledged the respondent’s attempt to solicit a mentally disabled minor who was residing at Mendota Mental Health Facility. One of these letters was sent like ten days after the [c]ourt denied his discharge trial. I have reviewed one of those letters that have been filed, in which the respondent, I believe, approximately a 55-year-old man is telling a 17 year old how pretty he is. There is no other reasonable explanation for that, other than the fact that this is another manifestation of his sexual deviance.

Dr. Endres’ report noted that Gilbert had been restricted from sending mail to an individual who was determined to be seventeen years old, but that Gilbert stated that he had been unaware that the individual was a “mentally ill minor.” Thus, the circuit court was presented with Gilbert’s position that he did not know that the individual he had written was seventeen years old and mentally ill. Gilbert does not explain how his counsel should have further challenged that evidence. In any event, we have concluded that Gilbert failed to present evidence that his condition has changed since his 2019 discharge trial so that a fact-finder would likely conclude

that he no longer meets the criteria for commitment.<sup>3</sup> We discern no arguable merit to a claim that, without the evidence related to the letter Gilbert wrote to a seventeen-year old, Gilbert would have been entitled to a discharge trial. Accordingly, nothing before us would support a non-frivolous claim of ineffective assistance of counsel for failing to challenge that evidence. *See id.*

Gilbert also contends that he was not allowed to speak or to communicate with his counsel during the hearing on his petition, at which Gilbert and his counsel appeared by Zoom. He contends that, at the hearing, the court “started bashing” him and made “unconstitutional” decisions. However, our review of the hearing transcript does not reveal any issue of arguable merit. Our review of the hearing transcript does not reveal any comments by the circuit court that would support a non-frivolous challenge to the circuit court’s decision which, as explained, is subject to our independent review. Additionally, the circuit court muted Gilbert during the hearing after Gilbert repeatedly interrupted the court’s oral ruling, and only after the court warned Gilbert not to interrupt and Gilbert continued to do so. We discern no arguable merit to any issues arising from the hearing on the petition.

Upon our independent review of the record, we have found no other arguable basis for reversing the order denying discharge. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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<sup>3</sup> As the no-merit report observes, the circuit court improperly weighed the evidence for and against the discharge petition. *See State v. Hager*, 2018 WI 40, ¶30, 381 Wis. 2d 74, 911 N.W.2d 17 (“[W]hen they review petitions for discharge, courts are to carefully examine, but not weigh, those portions of the record they deem helpful to their consideration of the petition, including facts both favorable as well as unfavorable to the petitioner.”). However, we agree with counsel’s assessment that this issue lacks arguable merit because we independently review whether the petitioner is entitled to a discharge trial. *See id.*, ¶19.

IT IS ORDERED that the order denying discharge is summarily affirmed under WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Dustin C. Haskell is relieved of any further representation of Carl Gilbert in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*