OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I/IV

October 1, 2013

To:

Hon. Dennis R. Cimpl
Circuit Court Judge
Children's Court Center
10201 W. Watertown Plank Rd.
Wauwatosa, WI 53226

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Patricia A. FitzGerald
Patricia A. FitzGerald Law Office
229 N. Grove St.
Mt. Horeb, WI 53572-1615

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Reuben Adams
Sand Ridge Secure Treatment Center
P.O. Box 800
Mauston, WI 53948

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

2012AP1198-NM In re the commitment of Reuben Adams: State of Wisconsin v. Reuben Adams (L.C. # 1994CF942970)

Before Blanchard, P.J., Higginbotham and Sherman, JJ.

Reuben Adams appeals an order denying his petition for discharge from commitment as a sexually violent person under Chapter 980 of the Wisconsin Statutes and finding that the criteria for supervised release are not present. Attorney Patricia FitzGerald has filed a no-merit report seeking to withdraw as his appellate counsel. WIS. STAT. RULE 809.32 (2011-12);[1] *see also* ***Anders v. California***, 386 U.S. 738, 744 (1967); and ***State ex rel. McCoy v. Wisconsin Court of***

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Appeals, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). Adams has filed a response to the no-merit report, arguing that his trial counsel was ineffective. Upon our independent review of the record, the no-merit report, and Adams' response, we agree with counsel's assessment that there are no arguably meritorious appellate issues and affirm the order of the circuit court.

Adams filed a petition for discharge from commitment as a sexually violent person under Chapter 980 of the Wisconsin Statutes. Attached to his petition was a report authored by Dr. Sheila Fields, who opined that Adams was "not more likely than not to commit further sexually violent acts." Fields recommended that the court favorably consider discharge of Adams' commitment. However, Fields also stated in her report that she did not believe Adams had made significant progress in treatment and opined that he did not meet the criteria for supervised release under WIS. STAT. § 980.07(4).

After an evidentiary hearing, the circuit court denied the petition for discharge and found that Adams was still a sexually violent person, as that term is defined in WIS. STAT. § 980.01(7), and that the criteria for supervised release were not present. We must sustain the circuit court's finding as to the petition for discharge if the evidence, viewed most favorably to the verdict, establishes by clear and convincing evidence that: (1) Adams was convicted of a qualifying offense; (2) he has a qualifying mental disorder; (3) he is dangerous to others in that his mental disorder makes it more likely than not that he will engage in future acts of sexual violence. *See* ***State v. Burgess***, 2002 WI App 264, ¶23, 258 Wis. 2d 548, 654 N.W.2d 81; WIS. STAT. §§ 980.01(7) and 980.09.

As to the first factor, Adams was convicted in his early twenties of third-degree sexual assault and at the age of twenty-nine of first-degree sexual assault of a child. As to the second factor, we are satisfied that the record establishes by clear and convincing evidence that Adams has a mental disorder as that term is defined in WIS. STAT. § 980.01(2). Dr. Lori Pierquet, a licensed psychologist who testified as an expert at the evidentiary hearing on behalf of the State, opined that Adams has a diagnosis of paraphilia and antisocial personality disorder. The report submitted with Adams' petition for discharge authored by Sheila Fields also stated that Adams has antisocial personality disorder that has been manifested through sexual violence.

As to the third factor, Pierquet opined at the evidentiary hearing that Adams' risk level continues to make it more likely than not that he will sexually reoffend. The State's other expert witness, psychologist Stephen Kopetskie, testified that Adams had been making progress in treatment between December 2007 and January 2010 but that, since then, his efforts and motivation for treatment had been poor. Kopetskie testified that Adams had been failing to complete assignments and was demoted from Phase II to Phase I of the four-phase treatment model used at Sand Ridge Secure Treatment Facility. Kopetskie also testified that Adams has a history of inappropriate behavior toward female staff members.

The record also contains testimony from both Pierquet and Kopetskie about Adams' scores on various assessment tools. Kopetskie testified that Adams scored 33 out of 40 on the Hare Psychopathy Checklist, which is considered a very high score. He further testified that research indicates that individuals with a high level of psychopathy who also have a history of sexual deviance, as does Adams, have a high risk of recidivism—according to one study, 60 percent.

Pierquet testified that, on the RRASOR risk assessment tool for sexual offense recidivism, Adams scored a 4 out of 6, which is considered a high risk. She also testified regarding Adams' scores on the Static-99 and Static-99R tools, which are used to predict likelihood of sexual offenses. On the Static-99 he scored a 7, which is associated with a 45 percent recidivism rate in 10 years and a 52 percent recidivism rate in 15 years. Pierquet testified that Adams scored a 6 on the Static-99R, one point lower than on the Static-99 because the Static-99R takes into account that he is over 40 years of age. A score of 6 on the Static-99R is associated with a 41.9 percent recidivism rate in 10 years, which is considered high risk. Because Chapter 980 requires consideration of whether a person will reoffend over his lifetime and because the Static-99 goes out only 15 years and the Static-99R only 10 years, Pierquet made extrapolations using that data. She opined that, at age 50, which was Adams' age at the time of the hearing, Adams had approximately 26 more years to live and that, because he was at a 45 to 42 percent risk of reoffense at age 50, his lifetime risk would be above the threshold of 51 percent. We are satisfied, based upon the record, that the circuit court's finding that Adams was more likely than not to engage in future acts of sexual violence is supported by clear and convincing evidence.

We turn next to Adams' argument that his trial counsel was ineffective for failing to present expert testimony to counter the testimony of the State's witnesses. A review of the record indicates that, on the first date scheduled for an evidentiary hearing, Adams' counsel moved for adjournment based upon a conversation with Adams the prior week, during which counsel learned that there had been a change in Adams' treatment status "to his detriment." Adams' counsel informed the circuit court that the experts he had planned to call as witnesses, including Fields and one other expert, would need to reconsider their reports. The court granted

the adjournment. The hearing was rescheduled and the State presented its case. When it came time to present Adams' case, his trial counsel informed the court that it was likely Adams would not be putting forward any witnesses. The court again adjourned the hearing and scheduled it for a different date.

Prior to the rescheduled hearing, Adams wrote a letter to the circuit court requesting that his counsel withdraw from the case. The court denied the request on the record at the hearing. The court reasoned that they were in the middle of a trial and that the alleged deficiencies of counsel asserted by Adams were strategic decisions. Adams now asserts that, by not calling any witnesses, his trial counsel failed to present a defense and denied him the opportunity to have a full and fair hearing on the facts of his case.

To be ineffective, counsel's actions have to have been both defective and have caused prejudice. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). Here, Adams asserts that he was not informed on a timely basis that the two doctors who had previously written reports favoring his discharge had withdrawn their recommendations for discharge. Appellate counsel informs us in the no-merit report that she spoke with both of the experts who had written the reports that initially favored discharge. Appellate counsel states that both experts confirmed that they had changed their minds about recommending Adams' discharge, given the new information they had about regression in Adams' treatment progress at Sand Ridge. Given these circumstances, we are satisfied that it was reasonable for counsel not to put those experts on the stand. To the extent Adams asserts that counsel should have found another expert to support the petition for discharge, we have been given no basis upon which to conclude that such an expert exists.

Regarding the circuit court's decision on supervised release:

> The court may not authorize supervised release unless, based on all of the reports, trial records, and evidence presented, the court finds that *all* of the following criteria are met:
>
> 1. The person has made significant progress in treatment and the person's progress can be sustained while on supervised release.
>
> 2. It is substantially probable that the person will not engage in an act of sexual violence while on supervised release.
>
> 3. Treatment that meets the person's needs and a qualified provider of the treatment are reasonably available.
>
> 4. The person can be reasonably expected to comply with his or her treatment requirements and with all of his or her conditions or rules of supervised release that are imposed by the court or by the department.
>
> 5. A reasonable level of resources can provide for the level of residential placement, supervision, and ongoing treatment needs that are required for the safe management of the person while on supervised release.

WIS. STAT. § 980.08(4)(cg) (emphasis added). We already have concluded above that the evidence establishes that Adams is more likely than not to engage in a future act of sexual violence. Thus, the second requirement of WIS. STAT. § 980.08(4)(cg) is not met, and we need not take our analysis further.

Upon our independent review of the record, we have found no other arguable basis for reversing the order denying discharge and finding that the criteria for supervised release are not met. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney FitzGerald is relieved of any further representation of Adams in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals