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DISTRICT IV

October 21, 2013

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

2012AP2664

In re the commitment of Ervin Burriss: State of Wisconsin v. Ervin Burriss (L.C. # 1996CF1436B)

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

Ervin Burriss appeals an order that denied his June 22, 2012, petition for discharge from a commitment as a sexually violent person under Chapter 980 of the Wisconsin Statutes.¹ We affirm for the reasons discussed below.

¹ We note that the discharge petition was file stamped by the circuit court on June 22, 2012, but the order denying it referred to its filing date as April 2, 2012. The apparent discrepancy led the State to believe that the relevant discharge petition was not in the record. We do not ask the State to provide a supplemental brief, however, because the issues on appeal are straightforward and plainly controlled by existing precedent.

A person committed under Chapter 980 is entitled to periodic reexamination under WIS. STAT. § 980.07 (2011-12),² and may petition the court for discharge at any time. However, the court shall deny a discharge petition without a hearing unless it alleges facts from which the court or a jury could conclude that the petitioner's condition has changed since the initial commitment, such that he or she no longer meets the criteria for a sexually violent person—that is, that the subject: (1) committed a sexually violent offense; (2) currently has a mental disorder affecting emotional or volitional capacity and predisposing the subject to engage in acts of sexual violence; and (3) is dangerous because the mental disorder makes it more likely than not that the subject will engage in future acts of sexual violence. WIS. STAT. § 980.09; WIS. STAT.—CRIMINAL 2506.

In making its determination as to whether an evidentiary hearing is warranted, the court may consider the facts alleged in the petition and the State's response, any past or current evaluations in the record or other documents provided by the parties, and arguments by counsel. WIS. STAT. § 980.09(2). This limited paper review to test the sufficiency of the petition is aimed at weeding out meritless or unsupported claims. *State v. Arends*, 2010 WI 46, ¶¶26-30, 325 Wis. 2d 1, 784 N.W.2d 513.

In the discharge petition that is the subject of this appeal, Burris did not make any factual allegations that would show his condition has changed since his original commitment, such as having made progress in treatment or having obtained a new diagnosis. To the contrary, in the most recent annual evaluation provided to the court before the petition was filed, licensed

² All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

psychologist Scott Woodley concluded that Burris still did not meet the criteria for either discharge or supervised release. Instead, Burris based his petition for discharge upon purely legal challenges, claiming that Chapter 980 is unconstitutional because: (1) the legislature reduced the requisite risk that the subject would commit future sexually violent acts from “substantially probable” to “more likely than not;” (2) there are no rules setting forth the required qualifications for the experts who conduct the annual reviews; and (3) extending detention after the completion of the sentence in the criminal case for the predicate offense is cruel and unusual.

Putting aside the fact that the validity of the original order of commitment is beyond the scope of an appeal from an order denying a discharge petition, we note that each of Burris’s legal contentions has already been rejected by this court or the Wisconsin Supreme Court. *See State v. Carpenter*, 197 Wis. 2d 252, 265-72, 541 N.W.2d 105 (1995) (Chapter 980 involves a civil commitment to provide treatment, not punishment); *State v. Nelson*, 2007 WI App 2, ¶¶9-18, 298 Wis. 2d 453, 727 N.W.2d 364; *State v. Zanelli*, 223 Wis. 2d 545, 555, 589 N.W.2d 687 (Ct. App. 1998) (state may decide how to meet its burden of proof). Accordingly, the circuit court properly denied the discharge petition without a hearing.

IT IS ORDERED that the circuit court’s order denying the discharge petition Ervin Burris filed on June 22, 2012, is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals