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**DISTRICT II/III**

December 3, 2013

To:

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Circuit Court Judge  
Waukesha County Courthouse  
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You are hereby notified that the Court has entered the following opinion and order:

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2012AP1941-NM

State of Wisconsin v. Jamerrel V. Everett (L.C. # 2004CI1)

Before Hoover, P.J., Mangerson and Stark, JJ.

Counsel for Jamerrel Everett has filed a no-merit report concluding there is no arguable basis for challenging an order denying Everett's petition for discharge from his WIS. STAT. ch. 980<sup>1</sup> commitment. Everett was advised of his right to respond to the report and has not responded. Upon our independent review of the record as mandated by WIS. STAT. RULE 809.32, we conclude there is no arguable merit to any issue that could be raised on appeal.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

In 2004, Everett was committed as a sexually violent person under WIS. STAT. ch. 980. After Everett filed the underlying pro se petition for discharge, the State moved to dismiss the petition on the ground that it failed to allege any changes to Everett's condition. Based on its review of the petition, Everett's treatment progress report, and a re-examination report, the court denied the petition without a discharge hearing.

There is no arguable basis for challenging the order denying Everett's discharge petition. Before granting a discharge hearing, the circuit court must go through a two-step process "aimed at weeding out meritless and unsupported petitions, while still protecting a petitioner's access to a discharge hearing." *State v. Arends*, 2010 WI 46, ¶22, 325 Wis. 2d 1, 784 N.W.2d 513. While the circuit court must consider all of the evidence in the record when determining whether a discharge hearing is warranted, the petitioner must also produce some new evidence, not previously considered by a trier of fact, that demonstrates he or she does not meet the criteria for commitment under WIS. STAT. ch. 980. *In re Schulpius*, 2012 WI App 134, ¶4, 345 Wis. 2d 351, 825 N.W.2d 311.

Here, Everett's petition claimed that his antisocial personality disorder could not be the basis for his WIS. STAT. Ch. 980 commitment because the disorder itself does not predispose persons to commit acts of sexual violence. This court has held, however, that "antisocial personality disorder" can be a "condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence" and, thus, constitutes a "mental disorder" under WIS. STAT. § 980.01(2). *State v. Adams*, 223 Wis. 2d 60, 69-70, 588 N.W.2d 336 (Ct. App. 1998).

In a re-examination report, licensed psychologist Christopher Snyder noted that Everett's antisocial personality disorder is exhibited through a "failure to conform to social norms, impulsivity, irresponsibility and a lack of remorse." Snyder added that "[t]his pattern is seen as including his sexual behavior as well as his nonsexual criminal behavior," and "this mental condition predisposes [Everett] to engage in acts of sexual violence, as defined by [WIS. STAT.] Chapter 980." Snyder opined that Everett's degree of risk "is in a category that exceeds the legal threshold of 'more likely than not' that he will commit another sexually violent offense should he be discharged."

Everett's petition alternatively challenged the "admissibility" of Snyder's opinion under WIS. STAT. § 907.02(1), which adopted the reliability standard for expert testimony set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). The statute, however, applies to actions and special proceedings commenced on or after February 1, 2011. Although Everett's discharge petition was filed after that date, the petition did not commence a new action. Instead, the discharge proceedings were a continuation of the underlying commitment proceedings, which were commenced in 2004 when the original petition for commitment was filed. See *State v. Alger*, No. 2013AP225, recommended for publication (WI App Nov. 19, 2013).

Even were we to assume the statute applied to the discharge petition, there is no arguable merit to Everett's claim. Under the *Daubert* standard, expert testimony must be based upon sufficient facts or data, the testimony must be the product of reliable principles and methods, and the witness must have applied the principles and methods reliably to the facts of the case. WIS. STAT. § 907.02(1). Here, the court properly determined that actuarial instruments utilized by Snyder have been subject to peer review and publication and have been tested, adding that the

criteria and actuarial instruments utilized “have been generally accepted” when assessing an offender’s risk to offend.

Ultimately, Everett’s petition failed to set forth new evidence demonstrating that he does not meet the criteria for commitment as a sexually violent person. Therefore, there is no arguable merit to a claim that the circuit court erred by denying the discharge petition without a hearing.

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Jeffrey W. Jensen is relieved of further representing Everett in this matter. *See* WIS. STAT. RULE 809.32(3).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*