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DISTRICT IV

February 5, 2014

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

2013AP263

In re the commitment of Samuel Ernest Post: State of Wisconsin v.
Samuel Ernest Post (L.C. # 1994CF1200)

Before Lundsten, Sherman and Kloppenburg, JJ.

Samuel Post appeals orders denying his petition for discharge from a WIS. STAT. ch. 980¹ commitment and denying his motion for reconsideration. He argues that he is entitled to an evidentiary hearing on his petition for discharge based on a new actuarial tool, the MATS-1, a multisample age-stratified table of sexual recidivism rates. The circuit court denied the petition, finding no significant change in Post's condition or in the research since Post's petition was heard in June 2010. Upon our review of the record and the parties' briefs, we conclude at

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

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

A petition for discharge must be based on “something more than facts, professional knowledge, or research that was considered by an expert testifying in a prior proceeding that determined the person to be sexually violent.” *State v. Combs*, 2006 WI App 137, ¶32, 295 Wis. 2d 457, 720 N.W.2d 684. The circuit court here correctly concluded that Post failed to show a change in his condition, and the new research cited by Post’s expert was not a new development in the professional knowledge or research since Post’s 2010 discharge hearing.

First, the actuarial scores are but one factor to be considered in assessing a particular offender’s likelihood of reoffending. Post did not establish any change in the nonstatistical evidence that was the basis for denying his petition for discharge in June 2010. He was still in Phase 1 treatment at the time of the hearing on his present petition.

Second, the MATS-1 did not represent a change in professional knowledge because the research upon which it was based had already been considered at the 2010 discharge hearing. Post’s petition heard in 2010 was supported by psychologist Diane Lytton, who based her analysis on two articles authored or co-authored by Richard Wollert that were critical of the Static-99. Lytton’s report faulted the Static-99 for failing to take into account the age of the offender. Lytton calculated Post’s likelihood of reoffending under the age-stratified tables to be 9% after five years. Post’s present petition utilized the MATS-1 actuarial table. The MATS-1 is an age-stratified actuarial table derived from research on the Static-99 and the Automated Sexual Recidivism Scale and was partially based on a 2008 article partially authored by Wollert. The MATS-1 employs essentially the same age-stratified methodology as the tables used by Lytton.

Post's new actuarial score, 6% likelihood of reoffending after eight years, is not significantly different from his previous score, particularly when the actuarial score was not the basis for the rejection of his earlier petition. The mere creation of a new table that was substantially based on the same research Lytton used in her earlier assessment does not constitute a change in professional knowledge or research sufficient to justify an evidentiary hearing on Post's petition for discharge.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals