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March 20, 2014

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

2012AP2562-NM

In re the commitment of Gilbert Sanchez: State of Wisconsin v.
Gilbert Sanchez (L.C. # 2010CI5)

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

Attorney Dennis Schertz, appointed counsel for Gilbert Sanchez, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12),¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses: (1) whether the evidence was sufficient to support the court's finding that Sanchez is a sexually violent person; (2) whether Sanchez validly waived his rights to a jury trial and to testify; and (3) whether

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

Sanchez was afforded the effective assistance of counsel. Sanchez has responded to the no-merit report, asserting that the State's expert witnesses relied on flawed material from Sanchez's participation in the sex offender treatment program (SOTP) at Oshkosh Correctional Institution. Upon our independent review of the entire record, as well as the no-merit report and response, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

In November 2010, the State petitioned to commit Sanchez as a sexually violent person under WIS. STAT. ch. 980. Following a trial to the court, the court found that Sanchez is a sexually violent person and ordered Sanchez committed to institutional care in a secure mental health facility.

The first issue addressed in the no-merit report is whether the evidence was sufficient to support the court's finding that Sanchez is a sexually violent person. *See State v. Brown*, 2005 WI 29, ¶39, 279 Wis. 2d 102, 693 N.W.2d 715 (explaining that the sufficiency of the evidence test applies on review of a WIS. STAT. ch. 980 commitment); *see also State v. Curiel*, 227 Wis. 2d 389, 418, 597 N.W.2d 697 (1999) (explaining that the test for the sufficiency of the evidence is the same whether a jury or the circuit court acts as the factfinder). A challenge to the sufficiency of the evidence to support an order for commitment under 980 must establish that

the evidence, viewed most favorably to the State and the [commitment], is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found the [respondent] to be a sexually violent person beyond a reasonable doubt.

See State v. Marberry, 231 Wis. 2d 581, 593, 605 N.W.2d 612 (Ct. App. 1999) (citations omitted).

“Sexually violent person” under ch. 980 means that: (1) the person has been convicted of a sexually violent offense, adjudicated delinquent of a sexually violent offense, or found not guilty by reason of insanity of a sexually violent offense; (2) the person has a mental disorder—that is, a congenital or acquired condition affecting the person’s emotional or volitional capacity—predisposing the person to engage in sexual violence; and (3) the person is dangerous because his or her mental disorder makes it more likely than not that he or she will engage in sexual violence. *See* WIS. STAT. §§ 980.01(1m), (2), (6) and (7).

At the trial on the State’s petition to commit Sanchez as a sexually violent person, the State presented evidence of Sanchez’s criminal history, which included convictions for second-degree sexual assault and first-degree sexual assault of a child, which are sexually violent offenses under WIS. STAT. § 980.01(6). The State’s two expert witnesses testified that Sanchez has the mental disorders of paraphilia and antisocial personality disorder, predisposing Sanchez to engage in sexual violence. Both experts testified that Sanchez is more likely than not to engage in future acts of sexual violence. Both experts testified that they held those opinions to a reasonable degree of psychological certainty. Sanchez presented no evidence to contradict the State’s case. We conclude that there would be no arguable merit to an argument that, viewing the evidence in the light most favorable to the State, this evidence was so insufficient that no reasonable trier of fact could have found beyond a reasonable doubt that Sanchez is a sexually violent person.

Next, the no-merit report addresses Sanchez’s waiver of his right to a jury trial and his right to testify. We agree with counsel that the record establishes that Sanchez voluntarily waived those rights, and that any argument to the contrary would lack arguable merit.

Finally, counsel addresses whether Sanchez was afforded the effective assistance of counsel. We agree with counsel's assessment that a challenge to trial counsel's effectiveness would lack arguable merit.

Sanchez asserts in his no-merit response that the State's expert psychologists relied on flawed resources in reaching their opinions. Specifically, Sanchez asserts that he altered his SOTP work assignments at the insistence of inmate aides. Sanchez asserts that his work assignments contain inaccurate accounts of Sanchez's sexual fantasies and sexual history, and thus the experts should not have relied on that material. However, these assertions are vague. Moreover, Sanchez does not dispute that the experts relied on Sanchez's work product as Sanchez completed them. We discern no arguable merit to any issues based on Sanchez's claim that he provided false information during his participation in SOTP.

Upon our independent review of the record, we have found no other arguable basis for reversing the court's orders. 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. *See* WIS. STAT. RULE 809.21(1).

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

Diane M. Fremgen
Clerk of Court of Appeals