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**DISTRICT I**

April 8, 2014

To:

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

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2013AP702

State of Wisconsin v. Jimmy L. Robinson  
(L.C. # 2002CI3)

Before Curley, P.J., Kessler and Brennan, JJ.

Jimmy L. Robinson, who was committed pursuant to WIS. STAT. ch. 980 in 2005, appeals from an order denying his petition for supervised release. Because we conclude that the issues Robinson raises on appeal are moot, we summarily dismiss the appeal. *See* WIS. STAT. RULE 809.21(1) (2011-12).<sup>1</sup>

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

This appeal concerns Robinson's November 2011 petition for supervised release.<sup>2</sup> Pursuant to WIS. STAT. § 980.08(1), any person committed as a sexually violent person may petition the court for supervised release if at least twelve months have passed since the initial commitment or denial of the most recent release petition. The trial court may authorize supervised release only if it finds that five criteria have been satisfied:

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.

Sec. 980.08(4)(cg). The statute unambiguously "assigns the burden of producing probative evidence to the committed individual." *State v. West*, 2011 WI 83, ¶55, 336 Wis. 2d 578, 800 N.W.2d 929.

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<sup>2</sup> Petitions for supervised release that Robinson filed before and after 2011 are not before the court at this time. Also, we note that Robinson filed a petition for discharge in November 2011, but he withdrew that petition in December 2011.

Robinson's appellate brief argues that the trial court erred when it found that "Robinson had not met his burden of proof with respect to his supervised release petition." The brief explains that the trial court found that Robinson had not met the first of the five criteria outlined in WIS. STAT. § 980.08(4)(cg) and therefore did not consider the other four criteria. The brief further asserts that "[t]he trial court compounded this error by unilaterally deciding that a sixth 'unwritten' statutory element existed." The brief concludes: "[I]t is believed that this matter needs to be remanded to the Circuit Court and require that the court complete the appropriate analysis under Sec. 980.08 (4) (cg) 2-5 and determine whether Mr. Robinson has established by clear and convincing evidence the existence of each of those criteria."

After the case was submitted to this court, we directed the parties to file letter briefs addressing the issue of mootness. Our order explained:

Online court records indicate that after filing the notice of appeal of the May 2012 order, Robinson filed another petition for supervised release in November 2012. A court trial on that petition was held in September 2013 before the same judge who denied Robinson's [November 2011] petition. According to online records, the trial court found that Robinson "is an appropriate candidate for supervised release and ordered [the] case adjourned for [a] hearing on supervised release." In doing so, the trial court would have needed to determine that Robinson satisfied the five criteria in WIS. STAT. § 980.08(4)(cg), which is the same determination that Robinson is asking this court to order the trial court to consider on remand. Subsequent online records indicate that housing has not yet been identified and that the next court date is scheduled for June 3, 2014.

(Second and third sets of brackets in original.)

The State's letter brief asserts that the issues raised in Robinson's appeal are moot because the order for supervised relief was granted on September 24, 2013.<sup>3</sup> Thus, the State argues, "he has obtained the relief sought."

The letter brief subsequently filed by Robinson's counsel explains that he spoke with the attorney who is representing Robinson on his most current petition and also reviewed the State's letter brief. Counsel concludes: "[W]e concur with the conclusion reached by the [S]tate."

"An issue is moot when its resolution will have no practical effect on the underlying controversy. Mootness is a question of law that we review independently." *PRN Assocs. LLC v. DOA*, 2009 WI 53, ¶25, 317 Wis. 2d 656, 766 N.W.2d 559 (citation omitted). We agree with the parties that the issues presented in this case are moot. The relief sought by Robinson—a remand for the trial court to consider all five factors in WIS. STAT. § 980.08(4)(cg) and to determine whether Robinson met his burden of proof—would "have no practical effect on the underlying controversy," *see PRN Assocs. LLC*, 317 Wis. 2d 656, ¶25, because the trial court subsequently determined that Robinson is entitled to supervised release. Therefore, we summarily dismiss the appeal as moot.

Upon the foregoing,

IT IS ORDERED that appeal no. 2013AP702 is summarily dismissed as moot.

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

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<sup>3</sup> According to online court records, the next scheduled court date remains June 3, 2014, when the trial court will address housing options.