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DISTRICT II

November 19, 2014

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

2014AP1963-NM

In re the commitment of Christopher Goetsch:
State of Wisconsin v. Christopher Goetsch (L.C. #2013CI1)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Christopher Goetsch appeals a judgment, entered following a jury trial, committing him to the Wisconsin Department of Health Services as a sexually violent person. Goetsch's appellate counsel, Attorney Jeffrey W. Jensen, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2011-12).¹ Goetsch was advised of his right to file a response but has not done so. Upon our review of the no-merit report and the

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

record, we conclude that no arguably meritorious issues exist for an appeal, and we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21(1).

Goetsch entered a plea of no contest in September 2003 to one count of child enticement-sexual contact. *See* WIS. STAT. § 948.07(1). Before his discharge from confinement in that matter, the State filed a petition seeking to commit him under WIS. STAT. ch. 980. *See* WIS. STAT. § 980.02(1m). At the hearing on the petition, the circuit court concluded that probable cause existed to believe that Goetsch was a sexually violent person eligible for commitment. *See* WIS. STAT. § 980.04. Both parties demanded a jury trial. The jury found that Goetsch was a sexually violent person and ordered him committed for control, care and treatment. This no-merit appeal followed.

The no-merit report considers a single issue: whether Goetsch could raise an arguably meritorious challenge to the sufficiency of the evidence that he was a sexually violent person. Before the jury could find that Goetsch was a sexually violent person, the State had to prove beyond a reasonable doubt that he: (1) was previously convicted of a sexually violent offense; (2) suffers from a mental disorder; and (3) is more likely than not to engage in at least one future act of sexual violence because of the mental disorder. *See* WIS. STAT. §§ 980.01(1m), 980.01(7), 980.05(3)(a); *see also* WIS JI—CRIMINAL 2502.

We may not reverse a commitment based on insufficient evidence unless, viewed most favorably to the State and the commitment, the evidence “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 defendant to be a sexually violent person] beyond a reasonable doubt.” *State v. Kienitz*, 227 Wis. 2d 423, 434, 597 N.W.2d 712 (1999) (citations omitted). It is for the jury, as

trier of fact, to determine issues of credibility, weigh the evidence and resolve conflicts in the testimony. *Id.* at 435. Therefore:

if any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find [that the defendant is a sexually violent person], an appellate court may not overturn a verdict even if it believes the trier of fact should not have found [the defendant to be a sexually violent person] based on the evidence before it.

Id. at 434-35 (citations omitted).

We agree with appellate counsel that a challenge to the sufficiency of the evidence would lack arguable merit. It was established that Goetsch previously was convicted of a sexually violent offense. *See* WIS. STAT. § 980.01(6)(a) (“[s]exually violent offense” includes child enticement, as defined in WIS. STAT. § 948.07(1)). The State then presented the testimony of two psychologists, Dr. Scott Woodley and Dr. Christopher Tyre. Both testified that they evaluated Goetsch by interviewing him, reviewing legal, correctional, institutional, and psychiatric records, and conducting risk assessments. Both concluded that he suffers from an other specified personality disorder with antisocial and borderline features, making it difficult for him to control his behavior. Both concluded that he was more likely than not to commit a crime of sexual violence if not committed to a secure setting for treatment.

Goetsch called Dr. Christopher Snyder as a witness.² Dr. Snyder testified that he did not believe Goetsch had the requisite predisposing mental disorder to make it more likely than not that he would commit a sexually violent act. The trier of fact is not bound by an expert’s

² Dr. Snyder, who in the past has appeared for both the prosecution and the defense, testified that he had thought his role was as an independent evaluator. In our view, that understanding—or misunderstanding—enhanced Dr. Snyder’s credibility.

opinion, however, but may accept or reject it. *Kienitz*, 227 Wis. 2d at 438. We must affirm if there is any credible evidence on which the jury could have based its decision. *State v. Randall*, 222 Wis. 2d 53, 60, 586 N.W.2d 318 (Ct. App. 1998).

We independently considered whether the petition met the statutory requirements, whether the probable cause hearing and trial were timely held, *see* WIS. STAT. §§ 980.02, 980.04(2)(b)1., and 980.05(1), and whether proper objections were made at trial. We also reviewed the jury selection process. Finally, although defense counsel moved to set aside the verdict at the end of trial, she later advised the trial court that Goetsch did not wish to pursue any further motions on the verdict. We conclude that a challenge in any of those areas would lack arguable merit, and we are satisfied that no other issues warrant discussion.

We conclude that further proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of commitment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Jeffrey W. Jensen is relieved of any further representation of Christopher Goetsch on appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals