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DISTRICT I

October 2, 2015

To:

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A. D. B.

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

2015AP1248-NM

In re the commitment of A. D. B.: State of Wisconsin v. A. D. B.
(L.C. #1995CF950503)

Before Kessler, J.¹

A.D.B. appeals an order for involuntary medication.² His appellate counsel, Attorney Jeffrey W. Jensen, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967),

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

² A.D.B. is committed under WIS. STAT. ch. 980. The statutory basis for an involuntary medication order therefore includes both ch. 980 and WIS. STAT. ch. 51. See *State v. Anthony D.B.*, 2000 WI 94, ¶¶32-33, 36, 237 Wis. 2d 1, 614 N.W.2d 435. Accordingly, we identify A.D.B. only by his initials, and, on our own motion, we have amended the caption of this matter to shield A.D.B.'s identity. See WIS. STAT. § 51.30(3) (court proceedings under ch. 51 are closed); WIS. STAT. RULE 809.81(8) (individual involved in confidential matter before this court shall be identified by initials or other appropriate pseudonym).

and WIS. STAT. RULE 809.32. A.D.B. did not file a response. Based on an independent review of the record and of the no-merit report, this court concludes that there are no arguably meritorious issues for appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21(1).

In April 1997, the circuit court found A.D.B. to be a sexually violent person pursuant to WIS. STAT. § 980.06. He currently remains committed for treatment under ch. 980. On November 3, 2014, the State petitioned to continue his involuntary medication under the procedures set forth in WIS. STAT. ch. 51 and *State v. Anthony D.B.*, 2000 WI 94, 237 Wis. 2d 1, 614 N.W.2d 435. A.D.B. objected to the petition. The circuit court conducted a hearing at which the only witnesses were A.D.B. and his treating psychiatrist, Dr. Stephen Weiler. At the conclusion of the hearing, the circuit court found that A.D.B. needs medication, that he poses a risk of harm to himself or others if not medicated, and that he “is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his mental illness in order to make an informed choice as to whether to accept or refuse psychotropic medication or treatment.” The circuit court therefore ordered that A.D.B. “continue to be subject to the involuntary administration of medication.”

Pursuant to WIS. STAT. § 51.61, a person may refuse medication “unless a court determines that the person is incompetent to make such a decision.” *Outagamie Cnty. v. Melanie L.*, 2013 WI 67, ¶53, 349 Wis. 2d 148, 833 N.W.2d 607. To prevail, the State may pursue either of two approaches. *See id.*, ¶¶54-55. As applicable here, the State:

may prove by clear and convincing evidence that the individual is substantially incapable of applying the understanding he or she has of the advantages and disadvantages of the medication (and the alternatives) to his or her mental illness in order to make an informed choice as to whether to accept or refuse the medication.

Id., ¶55.

In the no-merit report, appellate counsel examines the sufficiency of the evidence presented in support of the petition for continued involuntary medication under the foregoing standard. Specifically, Weiler testified that he has treated A.D.B. for more than five years, that A.D.B. suffers from schizoaffective disorder, and that without medication, A.D.B.’s “paranoia increases, his irritability increases, and eventually he becomes aggressive and assaultive.... [T]here is a long history of assaultive behavior when untreated.” Weiler described A.D.B.’s “symptoms of aggressiveness” during the year preceding the hearing and explained that “while treated, A.D.B. continues to have verbal expressions of aggressive thought but manages without acting on them.”

Weiler then testified that he has explained to A.D.B. the advantages and alternatives of taking medication and that A.D.B. appears to understand the explanations but that A.D.B. is incapable of applying the understanding to his mental illness and making “an informed choice as to whether he would accept or refuse psychotropic medication or treatment.” Weiler said that A.D.B. denies his diagnosis and his need for medication “despite more than 20 years of such diagnoses [sic] being applied by psychiatrists in various circumstances.”

A.D.B. testified in opposition to the petition. He told the circuit court that he did not want to take psychotropic medication because it “makes [him] sick.” He said that he knew “wrong from right” and was “not even capable of any type of violence.”

This court will not disturb the factual findings of a circuit court unless they are clearly erroneous. *See id.*, ¶38. Weiler’s testimony provides ample support for the circuit court’s

findings here. We agree with appellate counsel that a challenge to the sufficiency of the evidence would lack arguable merit.

Based on an independent review of the record, we conclude that no additional potential issues warrant discussion. Any further proceedings regarding the order for involuntary medication would be without arguable merit within the meaning of *Anders* and WIS. STAT. RULE 809.32.

IT IS ORDERED that the order permitting the involuntary medication of A.D.B. 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 A.D.B. in regard to the order for involuntary medication.³ *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

³ Attorney Jensen advises that he represents A.D.B. in regard to a later order denying his petition for discharge from his WIS. STAT. ch. 980 commitment. This court's order relieving Attorney Jensen of further obligations to A.D.B. in regard to the order for involuntary medication does not affect Attorney Jensen's obligations to A.D.B. in regard to the order denying his petition for discharge.