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DISTRICT I

December 17, 2015

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

2014AP1150-NM In re the commitment of Darrell Aferon Morrow: State of Wisconsin v. Darrell Aferon Morrow (L.C. #1996CF961629)

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

Darrell Aferon Morrow appeals from an order denying his WIS. STAT. ch. 980 (2013-14)[1] petition for discharge without setting the petition for a hearing. Appellate counsel, Dennis Schertz, has filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Morrow was advised of his right to file a response, but he has not responded. Upon this court's independent review of record, as required by ***Anders***, and

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

counsel's report, we conclude that no issue of arguable merit for appeal exists. We therefore summarily affirm the order.

In 1990, Morrow was charged with and convicted of one count of first-degree sexual assault and four other offenses. On February 14, 1996, the Department of Corrections asked the Department of Justice to petition for Morrow's commitment as a sexually violent person. On November 13, 1996, Morrow was found to be sexually violent and, by order dated January 7, 1997, he was committed to the custody of the Department of Health and Social Services.

On April 22, 2013, Morrow filed the *pro se* petition for discharge that underlies this appeal. The part of the form petition that Morrow completed indicated he believed he was "no longer 'more likely than not' to commit an act of sexual violence":

> Because I am stable on what I call the miracle drug, and moved too phase two level-E—I would like too thank staff and HSU and Skillcore for dia[g]nosing me with the right med[i]cations. I have never since I had my nervous breakdown been put on such good meds as I have been since 1974 till 2008. While I was in DOC they overdosed me with too many shots and pills[.[2]]

Counsel was appointed for Morrow, and the attorney forwarded to the court a handwritten screed that Morrow wanted the court to consider with his petition. After reviewing Morrow's written submissions and the annual re-examination report, the circuit court denied Morrow's petition for discharge without further hearing on the petition.

[2] This portion of Morrow's handwritten petition is reproduced to the best of the court's ability; some words are illegible, capitalization in the document is erratic and may not be reproduced as written, and any errors left in the text are in the original.

Before a petition for discharge from a WIS. STAT. ch. 980 commitment can be granted, the circuit court must engage in a two-step process to determine whether to hold a discharge hearing. *See* ***State v. Arends***, 2010 WI 46, ¶3, 325 Wis. 2d 1, 784 N.W.2d 513. First, the circuit court determines whether the petition "alleges facts from which a reasonable trier of fact could conclude that the petitioner does not meet the criteria for commitment as a sexually violent person." *See* ***id.***, ¶4; *see also* WIS. STAT. § 980.09(1). If the petition suffices, then the circuit court reviews specific items, which may include prior doctors' reports and any supplemental documents provided by the petitioner, to determine whether the petition and the record contain "facts from which a reasonable trier of fact could conclude that the petitioner does not meet the criteria for commitment as a sexually violent person." *See* ***Arends***, 325 Wis. 2d 1, ¶5; WIS. STAT. § 980.09(2). Although in this second step, the circuit court must consider the entire record to determine whether a discharge hearing is warranted, "the petitioner must also produce some new evidence, not previously considered by a trier of fact, which demonstrates that he does not meet the criteria for commitment under WIS. STAT. ch. 980." *See* ***State v. Schulpius***, 2012 WI App 134, ¶4, 345 Wis. 2d 351, 825 N.W.2d 311.

The criteria for commitment under WIS. STAT. ch. 980 require the State to show three things: that the person has been convicted of a sexually violent offense; that the person has a mental disorder; and that the person is dangerous to others because he has a mental disorder which makes it more likely than not that he will engage in one or more future acts of sexual violence. *See* WIS JI—CRIMINAL 2502; WIS. STAT. § 980.01(7).

Morrow's petition itself contains no new facts. While it asserts he is now stable on medication, he had previously so asserted in a 2012 discharge petition, which was also denied and was not appealed. The circuit court commented it was denying the petition without a

hearing because it was stuck at the first step of WIS. STAT. § 980.09(1). We agree that the petition itself is insufficient—it does not allege "facts from which a reasonable trier of fact could conclude that the petitioner does not meet the criteria for commitment as a sexually violent person." *See* ***Arends***, 325 Wis. 2d 1, ¶4.

Although the circuit court noted that it was stuck on the first step, it indicated that it had considered the annual re-examination report, and it had reviewed Morrow's supplemental document. The examiner's report detailed Morrow's mental disorders, including schizoaffective disorder and a personality disorder, and explained why those orders predisposed Morrow to commit sexually violent offenses. The report also explained other factors, like Morrow's continued delusional thinking, high degree of psychopathy, and impaired self-management skills, that led the examiner to conclude that discharge was not appropriate.

Morrow's supplemental document was a lengthy denial of the events that led to his initial criminal conviction and a demand for a $300,500,000 "grant" to compensate him for wrongful imprisonment, which led the circuit court to note that Morrow was "denying everything rather than [focusing] on the treatment" that he was receiving. Thus, to the extent the circuit court actually progressed to the second ***Arends*** step, we still agree with its conclusion: Morrow has "failed to establish the existence of facts from which the court or jury may conclude that he does not meet the criteria for commitment as a sexually violent person." Accordingly, there is no arguable merit to a claim the circuit court erred in denying the discharge petition without a discharge hearing.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

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

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

Diane M. Fremgen
Clerk of Court of Appeals