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**DISTRICT I**

January 12, 2018

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

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2017AP990-NM

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

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

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Darrell Aferon Morrow appeals from an order denying his WIS. STAT. ch. 980 (2015-16)<sup>1</sup> petition for discharge without setting the petition for trial. 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.<sup>2</sup> Upon this court's independent review of the record, as required by *Anders*, and 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 20, 2016, Morrow signed a *pro se* petition for discharge, which was forwarded to the circuit court by staff at Sand Ridge Secure Treatment Facility. Although Morrow had checked the box stating "I am no longer 'more likely than not' to commit an act of sexual violence because[,]” Morrow left the lines following that declaration blank. He later submitted a supplemental petition, with an attached "autobiography," which is what the circuit court reviewed.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

<sup>2</sup> Well after the time for filing a response to the no-merit report expired, we received a handwritten document from Morrow, entitled "The Autobiography of Darrell Aferon Morrow." We have reviewed the document, which appears markedly similar to prior documents with the same title, and we conclude it presents no additional substantive issues to be discussed.

In the supplemental petition for discharge, Morrow claimed he was “no longer ‘more likely than not’ to commit an act of sexual violence” because “I am not gonna commit an act of violence. I never committed one. From the beginning, [victim L.P.] under oath the whole case she got against me all together in my autobiography that will be in social media before my court date December 15, 2016.”<sup>3</sup> A notation to the left of Morrow’s signature lists “Face Book,” Google, and “C-Tube.”

As noted, Morrow also submitted an eighteen-page, handwritten document he described as an “autobiography.” In this document, Morrow insists he is innocent of the underlying sexual assault, asserts that L.P. committed perjury, and rehashes the details of their encounter. The autobiography also demands “500 30 million five hundred thousand dollars”<sup>4</sup> to hold Milwaukee County accountable for his continued commitment and warns that “next year if I am still in here it gonna cost the State a billion dollars.”

The circuit court held a brief hearing in which the parties provided some argument, but the court ultimately denied the petition as insufficient. The court explained that it had reviewed the entire file, which reflects that Morrow still has a “predisposing mental health condition.” Further, though Morrow had made some progress in treatment, he had “not made progress with regard to self-management” and impulsivity, and he had remained in Phase II of a three-phase treatment program since 2008. Thus, the circuit court denied the petition without setting it for trial. The order explained that Morrow had “failed to establish the existence of facts from which

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<sup>3</sup> Some punctuation has been added.

<sup>4</sup> We perceive this to be the sum \$530,500,000.

the court or jury may conclude that he does not meet the criteria for commitment as a sexually violent person” and ordered Morrow to remain committed. Morrow appeals.

An individual committed under WIS. STAT. ch. 980 may petition for discharge at any time. *See* WIS. STAT. § 980.09(1). A petition for discharge triggers a two-step review process. *See State v. Talley*, 2017 WI 21, ¶27, 373 Wis. 2d 610, 891 N.W.2d 390. The circuit court first conducts a paper review of the petition, which shall be denied unless it “alleges facts from which the court or jury would likely conclude the person’s condition has changed ... so that the person no longer meets the criteria for commitment as a sexually violent person.”<sup>5</sup> *See* WIS. STAT. § 980.09(1); *see also State v. Arends*, 2010 WI 46, ¶4, 325 Wis. 2d 1, 784 N.W.2d 513.

In reviewing the petition for its sufficiency, the circuit court may hold a hearing to determine whether the petition is indeed sufficient. *See* WIS. STAT. § 980.09(2). This second step involves an “expanded review” of the petition, in which the circuit court “may consider the record, including evidence introduced at the initial commitment trial,” current or past reports,

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<sup>5</sup> WISCONSIN STAT. § 980.09 was revised in 2013. *See* 2013 Wis. Act 84, §§ 21-25. Among the revisions was a change in the standard for a petition to obtain a hearing: previously, the circuit court considered whether the petition alleged facts from which a fact-finder “may conclude” a person no longer meets the criteria for commitment. *See* WIS. STAT. § 980.09(1)-(2) (2011-12). Under the revised statute, the circuit court considers whether the fact-finder “would likely conclude” a person no longer meets the criteria for commitment. *See* WIS. STAT. § 980.09(1)-(2) (2015-16). The circuit court here appears to have applied the prior standard, which arguably imposes a lower burden on Morrow. *See State v. Hager*, 2017 WI App 8, ¶32, 373 Wis. 2d 692, 892 N.W.2d 740 (revisions “accomplished a material increase in the petitioner’s burden of production”), *review granted*, 2017 WI 60, 376 Wis. 2d 636, 899 N.W.2d 361.

The question of whether the amended statute applies retroactively is under review. *See State v. Carter*, 2017 WI App 9, ¶2, 373 Wis. 2d 722, 892 N.W.2d 754 (concluding revisions apply retroactively), *review granted*, 2017 WI 60, 376 Wis. 2d 636, 899 N.W.2d 361; *cf. State v. Alger*, 2015 WI 3, ¶4, 360 Wis. 2d 193, 858 N.W.2d 346 (new evidentiary standard of WIS. STAT. § 907.02(1) applies based on date of original WIS. STAT. ch. 980 commitment, not date of discharge petitions). Thus, while our opinion is written with the current law in mind, the result is the same under either standard: if Morrow does not satisfy the lighter burden the circuit court applied to him, he surely does not satisfy the greater burden we discuss.

relevant facts in the petition and the State's response, arguments of counsel, and any supporting documentation provided. *See id.*; *see also Talley*, 373 Wis. 2d 610, ¶27. The pleading standard is the same at this second stage as in the first: whether the petition alleges facts "from which a court or jury would likely conclude the person no longer meets the criteria for commitment." *See* WIS. STAT. § 980.09(2); *see also Talley*, 373 Wis. 2d 610, ¶27, and *State v. Richard*, 2014 WI App 28, ¶13, 353 Wis. 2d 219, 844 N.W.2d 370. If the court determines facts exist from which the fact-finder would likely conclude the petitioner no longer meets the criteria for commitment, the court shall set the matter for trial. *See* WIS. STAT. § 980.09(2).

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 or she has a mental disorder which makes it more likely than not that he or she will engage in one or more future acts of sexual violence. *See* WIS JI—CRIMINAL 2502; WIS. STAT. § 980.01(7).

We agree with the circuit court that Morrow's petition is insufficient to warrant trial to a fact-finder: absolutely nothing in Morrow's petition, "autobiography," or the record constitutes facts from which a trier of fact would likely conclude that Morrow no longer meets the criteria for commitment. As the circuit court noted, the record still indicates that, despite some treatment progress, Morrow has a mental disorder that makes him dangerous to others. The circuit court also properly rejected Morrow's attempt to relitigate his criminal conviction.

Accordingly, there is no arguable merit to a claim that the circuit court erred in denying Morrow's petition for discharge without a trial to a fact-finder.

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

Upon the foregoing, therefore,

IT IS ORDERED that the order 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).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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