



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

February 7, 2018

To:

Hon. James K. Muehlbauer
Circuit Court Judge
Washington County Courthouse
P.O. Box 1986
West Bend, WI 53095-1986

Theresa Russell
Clerk of Circuit Court
Washington County Courthouse
P.O. Box 1986
West Bend, WI 53095-1986

Holly L. Bunch
Assistant District Attorney
Safety Building
821 West State St.
Milwaukee, WI 53233

Charlotte Gibson
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Jefren E. Olsen
Assistant State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Eric J. Dahl, #341371
Sand Ridge Secure Treatment Center
P.O. Box 800
Mauston, WI 53948

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

2016AP2085-NM In re the commitment of Eric J. Dahl: State of Wisconsin v. Eric J. Dahl (L.C. #2007CI1)

Before Reilly, P.J., Gundrum and Hagedorn, 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).

Eric Dahl appeals from a circuit court order denying his WIS. STAT. § 980.09 (2015-16)¹ petition for discharge from his WIS. STAT. ch. 980 commitment. Dahl's appellate counsel has

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

filed a no-merit report pursuant to WIS. STAT. RULE 809.32, WIS. STAT. § 980.095, *State ex rel. Seibert v. Macht*, 2001 WI 67, ¶20, 244 Wis.2d 378, 627 N.W.2d 881, and *Anders v. California*, 386 U.S. 738 (1967). Dahl received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders*, we summarily affirm the order because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses whether (1) there were any errors in the court trial on Dahl's discharge petition that would have arguable merit for appeal; and (2) whether there was sufficient evidence that Dahl remains a sexually violent person and not a proper subject for discharge from his commitment. We agree with appellate counsel that these issues lack arguable merit for appeal.

We agree with appellate counsel that there were no errors in the court trial that would have arguable merit for appeal. The circuit court did not err when it conducted a colloquy with Dahl to confirm that he wished to waive a jury trial. *State v. Denman*, 2001 WI App 96, ¶¶8-13, 243 Wis. 2d 14, 626 N.W.2d 926. The circuit court properly exercised its discretion when it decided evidentiary matters raised by Dahl's motion in limine and permitted the use in the current discharge proceeding of Dahl's prior evaluations. *State v. Hunt*, 2014 WI 102, ¶20, 360 Wis. 2d 576, 851 N.W.2d 434.

We also agree with appellate counsel that there was sufficient evidence that Dahl did not meet the standard for discharge from his WIS. STAT. ch. 980 commitment. A ch. 980 committee may be discharged "from commitment once the statutorily-defined dangerousness 'abates.'" *State ex rel. Marberry v. Macht*, 2003 WI 79, ¶14, 262 Wis. 2d 720, 665 N.W.2d 155 (citation

omitted). “A committed person may petition the committing court for discharge at any time.” Section 980.09(1). At the discharge hearing, the State “has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment as a sexually violent person.” Section 980.09(3). A “sexually violent person” is “a person who has been convicted of a sexually violent offense” and “who is dangerous because he or she suffers from a mental disorder that makes it likely that the person will engage in one or more future acts of sexual violence.” Section 980.01(7).

In reviewing the sufficiency of the evidence in a WIS. STAT. ch. 980 proceeding, we defer to the circuit court’s evaluation of the evidence and its assessment of the witnesses’ credibility. *State v. Rachel*, 2010 WI App 60, ¶20, 324 Wis. 2d 465, 782 N.W.2d 443. We will affirm the circuit court’s decision to deny discharge unless the evidence, viewed most favorably to the State and the commitment, was so lacking in probative value that no reasonable trier of fact could have found Dahl to be a sexually violent person. *State v. Kienitz*, 227 Wis. 2d 423, 434, 597 N.W.2d 712 (1999).

The discharge petition was thoroughly litigated. The circuit court placed greater weight on the lengthy experience of Dr. Richard Elwood, the State’s expert. The court found Dr. Elwood’s testimony more credible than that of Dahl’s expert, Dr. Courtney Endres. Dr. Elwood opined that due to Dahl’s disorders (pedophilia, antisocial personality disorder and borderline intellectual functioning), he remained more likely to commit a future act of sexual violence. In contrast, Dr. Endres opined that Dahl was less likely to commit a future act of sexual violence.

Relying upon the testimony of Dr. Elwood, the circuit court found by clear and convincing evidence that Dahl had not made progress in sex offender treatment,² had pedophilia and borderline intellectual functioning disorders, and was more likely than not to commit a sexually violent act if discharged. The court properly considered Dahl's lack of progress in sex offender treatment. *State v. Pocan*, 2003 WI App 233, ¶12, 267 Wis. 2d 953, 671 N.W.2d 860 (progress in treatment is one way to show petitioner is no longer sexually violent). The court also determined that, under WIS. STAT. § 980.08(4)(cg)1., Dahl was not a candidate for supervised release because he had not made sufficient progress in sex offender treatment. WIS. STAT. § 980.09(4). The record supports the circuit court's decision to deny Dahl's discharge petition.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the order denying Dahl's petition for discharge and relieve Attorney Jefren Olsen of further representation of Dahl in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Jefren Olsen is relieved of further representation of Eric Dahl in this matter.

² The record shows that Dahl has not completed sex offender treatment.

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

Diane M. Fremgen
Acting Clerk of Court of Appeals