



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

March 7, 2018

To:

Hon. Barbara H. Key
Circuit Court Judge
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903-2808

Sara Henke
Register in Probate
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903-2808

James A. Kearney
James A. Kearney Law Office, S.C.
675 Deerwood Drive
Neenah, WI 54956-1629

Matthew A. Lynch
P.O. Box 135
Thiensville, WI 53092-0135

V. S. 156610
Waupun Corr. Inst.
P.O. Box 351
Waupun, WI 53963-0351

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

2016AP1207-NM In the matter of the mental commitment of V.S.: Winnebago
County v. V.S. (L.C. # 2015ME411)

Before Neubauer, C.J.¹

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).

V.S. appeals from a six-month order committing him for mental health treatment under WIS. STAT. § 51.20. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). V.S. filed a sixty-three-page

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

response to counsel's no-merit report, as well as a lengthy motion seeking to compel appellate counsel to file a supplemental no-merit report, which we denied. Upon our independent review of the record and having considered the no-merit report and V.S.'s response, we summarily affirm the order because the expiration of the commitment renders the appeal moot. WIS. STAT. RULE 809.21.

V.S. is incarcerated in the Wisconsin State prison system pursuant to a lengthy criminal sentence. Winnebago County filed a WIS. STAT. § 51.20(1)(a) petition for examination alleging that V.S. was mentally ill, a proper subject for treatment, and dangerous because he was refusing evaluations and medications to treat his "significantly elevated" blood pressure. Following a hearing, the court commissioner found probable cause and entered an order for involuntary medication. V.S. demanded a jury trial but on October 6, 2015, one week before the scheduled trial date, V.S. stipulated on the record to a six-month commitment with the understanding that he would continue to take prescribed medication and the County would not seek an order for involuntary medication.

Appellate counsel's no-merit report addresses the potential issues of whether the circuit court lost competency to proceed due to the time limits set forth in Chapter 51, whether the County was required to file the petition under WIS. STAT. § 51.20(1)(ar), given V.S.'s status as an inmate, and if the expiration of V.S.'s commitment order renders these issues moot. We agree with appellate counsel's analysis and conclusion that because the commitment order expired and was not extended, the appeal is moot.² "An issue is moot when its resolution will have no

² We further agree with counsel's analysis and conclusion that aside from being moot, these potential issues are not arguably meritorious.

practical effect on the underlying controversy.” *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425. This court does not generally consider moot issues.

Id.

V.S. is no longer subject to the commitment order and an appellate ruling on any potential issue will have no practical effect on him. *See G.S. v. State*, 118 Wis. 2d 803, 805-06, 348 N.W.2d 181 (1984) (where the appellant is no longer subject to the commitment order, the case is rendered moot). Moreover, the record reflects that V.S. is a felon; even if the commitment order was reversed on appeal, V.S. would still be prohibited from possessing a firearm. Further, rather than contest the petition, V.S. stipulated to a six-month commitment and the County agreed not to pursue an involuntary medication order. V.S. cannot complain about an outcome that he requested.

In his response to the no-merit report, V.S. claims that trial counsel provided ineffective assistance in a number of ways, such as by failing to move to dismiss the petition before or after the probable cause hearing, failing to adequately challenge the evidence presented at the probable cause hearing, and neglecting to pursue defenses implicating racial bias and the court commissioner’s impartiality. V.S. argues that he should be permitted to withdraw his stipulation to the commitment due to trial counsel’s deficient performance. We need not address V.S.’s individual arguments because as we concluded above, the appeal is moot.

Because any potential appellate issues are moot, there are no arguable issues for appeal. For that reason, we may relieve appointed counsel of the duty of representation under WIS. STAT. RULE 809.32(3).

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 Matthew Lynch is relieved from further representing V.S. in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals