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DISTRICT III

June 19, 2018

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

2018AP150-AC

State of Wisconsin v. Jeffrey W. Butler (L. C. No. 2005CI1)

Before Stark, P.J., Hruz and Seidl, 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).

Jeffrey Butler appeals an order rejecting a plan prepared by the Department of Health Services (DHS) for Butler's supervised release from his commitment as a sexually violent person.¹ He also appeals an order denying his motion for postdisposition relief. Based upon our

¹ This appeal was advanced for decision under WIS. STAT. RULE 809.20 (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We summarily reverse the orders rejecting Butler's supervised release plan and denying his postdisposition motion, and we remand for further proceedings consistent with this summary disposition order.

Butler was committed as a sexually violent person under WIS. STAT. ch. 980 in 2006. In September 2016, Butler filed a petition for supervised release, and the State stipulated that supervised release was appropriate. The circuit court approved the parties' stipulation and ordered DHS to prepare a supervised release plan. DHS submitted a supervised release plan to the court, which proposed that, while on supervised release, Butler would live in a single-family residence in Coleman, Wisconsin.

After reviewing DHS's supervised release plan, the circuit court questioned whether Butler could be placed in the Coleman residence, given that the residence had never before been used for supervised release placements. The court cited WIS. STAT. § 980.08(5m), which provided: "The department may not arrange placement under this section in a facility that did not exist before January 1, 2006." In response, both Butler and the State argued the term "facility" in § 980.08(5m) did not apply to a single-family residence, which instead qualified as a "dwelling."

The circuit court entered a written order rejecting DHS's supervised release plan on August 9, 2017. The court concluded WIS. STAT. § 980.08(5m) prohibited Butler's placement in the Coleman residence because DHS "was not utilizing the proposed residence to house sex offenders prior to January 1, 2006." Butler subsequently moved for postdisposition relief, asking

the court to reconsider its interpretation of § 980.08(5m). The court entered an order denying Butler’s postdisposition motion on January 9, 2018, and Butler now appeals.

We summarily reverse the circuit court’s orders rejecting Butler’s supervised release plan and denying his postdisposition motion. Both Butler and the State agree that the circuit court misinterpreted WIS. STAT. § 980.08(5m) when it concluded the statutory term “facility” encompassed single-family residences.² For the reasons adeptly set forth in the parties’ briefs, we agree that a single-family residence does not qualify as a “facility” for purposes of § 980.08(5m). Accordingly, § 980.08(5m) does not bar an individual who has been committed under WIS. STAT. ch. 980 from being placed on supervised release in a single-family residence that was not used for such placements before January 1, 2006. The circuit court therefore erred as a matter of law by rejecting Butler’s supervised release plan on that basis.³

² WISCONSIN STAT. § 980.08(5m) was repealed in March 2018. *See* 2017 Wis. Act 184, § 28. Act 184 provides that the repeal of subsec. (5m) first applies to petitions for supervised release that were “pending ... on the effective date of this subsection”—that is, on March 30, 2018. *See* 2017 Wis. Act 184, § 9320; *see also* WIS. STAT. § 991.11 (stating that, unless otherwise specified, the effective date of an act is the day after publication). For purposes of this appeal, we assume, without deciding, that § 980.08(5m) remains applicable to Butler’s petition for supervised release.

³ In addition to rejecting Butler’s supervised release plan on the grounds that it violated WIS. STAT. § 980.08(5m), the circuit court also concluded the plan was not appropriate due to the Coleman residence’s distance from treatment providers and law enforcement, the lack of nearby employment opportunities, and the number of children living in the area. Butler contends these aspects of the court’s decision are moot because the Coleman residence is now occupied by other individuals on supervised release, and, accordingly, Butler can no longer be placed in that specific residence. The State does not dispute Butler’s assertion that the circuit court’s additional reasons for rejecting the supervised release plan are moot. We agree with Butler’s analysis of this issue.

Butler further contends that the current unavailability of the Coleman residence does not render moot his arguments regarding the circuit court’s interpretation of WIS. STAT. § 980.08(5m). Butler explains:

(continued)

Accordingly, we reverse the orders rejecting Butler's supervised release plan and denying his postdisposition motion, and we remand for further proceedings consistent with this summary disposition order. Specifically, in light of the fact that the Coleman residence is no longer available for Butler's placement, the circuit court should direct DHS on remand to prepare a new supervised release plan identifying a different residence where Butler can be placed.

Therefore,

IT IS ORDERED that the orders are summarily reversed and the cause is remanded for further proceedings consistent with this summary disposition order. WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals

DHS has not identified another residence or prepared a new supervised release plan because, under the court's interpretation of § 980.08(5m), there is currently only one residence in the state that could be used for supervised release placements and that residence is occupied. If this court rejects the circuit court's interpretation of § 980.08(5m), DHS can prepare a new plan based on other available dwellings that were not in use before January 1, 2006.

(Record citations omitted.) The State appears to agree that the unavailability of the Coleman residence does not render moot Butler's arguments regarding § 980.08(5m). Again, we agree with Butler's analysis of this issue.