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DISTRICT IV

June 27, 2018

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

2016AP2376-CRNM State of Wisconsin v. Steven R. Feck (L.C. # 1989CF466)

Before Lundsten, P.J., Blanchard and Kloppenburg, 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).

Megan Sanders-Drazen, counsel for Steven Feck, has filed a no-merit report concluding that there is no arguable basis for challenging an order denying Feck's petition for conditional release under WIS. STAT. § 971.17(4) (2015-16).¹ Feck was sent a copy of the report and has

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

filed a short response that does not raise any particular issues for appellate review. Upon our independent review of the record as mandated by WIS. STAT. RULE 809.32, this court concludes that there is no arguable merit to any issue that could be raised on appeal. Therefore, the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

On August 20, 1990, Feck was found not guilty by reason of mental disease or defect (NGI) of first-degree intentional homicide, and was committed for life to the department of health services. In December 2015, Feck filed a petition for conditional release. The circuit court denied the petition after a court trial, finding that the State had met its burden of showing by clear and convincing evidence that Feck poses a danger to himself and others. Feck now appeals.

There is no arguable basis for challenging the order denying Feck's petition for conditional release. Pursuant to WIS. STAT. § 971.17(4)(d), the circuit court "shall grant the petition unless it finds by clear and convincing evidence that the person would pose a significant risk of bodily harm to himself or herself or to others or of serious property damage if conditionally released." We review the circuit court's determination on this issue for an erroneous exercise of discretion. *See State v. Cook*, 66 Wis. 2d 25, 27-28, 224 N.W.2d 194 (1974).

At trial, the State elicited expert testimony from psychologists Michael Galli and Mary Kay Luzi. Galli and Luzi were appointed by the circuit court pursuant to orders for reexamination under WIS. STAT. § 971.17(4)(c). Galli testified that, in his opinion, Feck does not meet the criteria for conditional release. Galli opined that Feck continues to exhibit signs consistent with his diagnosis of schizophrenia, and that the conditions of his mental illness

present a danger to others. In explaining that Feck's mental illness causes him to be dangerous, Galli testified that Feck killed his grandfather because he believed that his grandfather was an agent of the devil. Galli further testified that Feck does not accept that he has a mental illness or the need for treatment.

Luzi testified that, in her opinion, Feck would pose a substantial risk of bodily harm to himself or others or of serious property damage if he were conditionally released to the community. She further opined that Feck's level of dangerousness rises to the level to require recommitment. Luzi testified that Feck has had difficulty adjusting to any unit other than maximum security at his current treatment facility. Luzi further testified that Feck is still actively symptomatic, with his symptoms including delusions, threatening and intimidating behavior, physical aggression, and sexual preoccupation.

Feck testified on his own behalf, and said he does not consider himself to be a danger to the community or himself, but recognizes that there's "something wrong" with him. Feck also stated that he believed the experts' testimony to be "garbage." When asked about whether he recalled engaging in some of the types of behaviors mentioned by Luzi and Galli, Feck testified that he could not remember.

The circuit court indicated that it was satisfied, based on the experts' written reports and their testimony, that the record contained clear and convincing evidence that Feck remains a significant danger to himself and others and, therefore, is not suitable for conditional release. The court discussed Feck's testimony, but did not give it much weight, noting that Feck does not recognize the seriousness of his mental illness. When required to make a finding of fact, the circuit court determines the credibility of the witnesses and the weight to be given to their

testimony, and its determination will not be disturbed on appeal. *State v. Turner*, 114 Wis. 2d 544, 550, 339 N.W.2d 134 (Ct. App. 1983). Nothing in the record, the no-merit report, or the response indicates that there would be any arguable merit to challenging the weight or credit the circuit court afforded the witnesses' testimony, or the court's finding that Feck remains a danger to himself and others. Accordingly, we agree with counsel's conclusion that there would be no arguable merit to challenging the circuit court's discretionary decision to deny Feck's petition for conditional release.

Therefore,

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

IT IS FURTHER ORDERED that Megan Sanders-Drazen is relieved of further representing Feck in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals