



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 I

September 26, 2018

To:

Hon. Faye M. Flancher
Circuit Court Judge
Racine County Courthouse
730 Wisconsin Ave.
Racine, WI 53403

Samuel A. Christensen
Clerk of Circuit Court
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

Patricia J. Hanson
District Attorney
730 Wisconsin Ave.
Racine, WI 53403

Jeffrey W. Jensen
111 E. Wisconsin Ave., Ste. 1925
Milwaukee, WI 53202-4825

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Jimmie L. Miller
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:

2017AP1842-NM State of Wisconsin v. Jimmie L. Miller (L.C. # 2014CI000001)

Before Kessler, P.J., Brennan and Dugan, 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).

Jimmie L. Miller appeals an order committing him as a sexually violent person under WIS. STAT. ch. 980 (2015-16).¹ Miller's appellate counsel, Attorney Jeffrey W. Jensen, filed a no-merit report. *See* WIS. STAT. § 980.038(4), WIS. STAT. RULE 809.32. Miller received a copy

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

of the report and filed a response. After considering the report and the response, and after conducting an independent review of the record, we conclude that there are no arguably meritorious issues for appeal.

The no-merit report first addresses whether there was sufficient evidence to support the jury's verdict finding that Miller is a sexually violent person. Dr. Anthony Jurek and Dr. Bradley Allen both testified that Miller had a psychiatric disorder that predisposed him to acts of sexual violence. Dr. Jurek and Dr. Allen also both testified that Miller was more likely than not to reoffend. Our review of the trial testimony shows that there is adequate evidence to support the jury's determination that Miller is a sexually violent person. *See* WIS. STAT. § 980.01(7) (a sexually violent person is someone who has been convicted of a sexually violent offense and is dangerous because he has "a mental disorder that makes it likely that [he] will engage in one or more acts of sexual violence"). Therefore, the circuit court properly determined that Miller should be committed for control, care, and treatment until he is no longer a sexually violent person. *See* WIS. STAT. § 980.06.

The no-merit report next addresses whether the circuit court erred in denying Miller's motion for a mistrial. The statutes provide that a twelve-person jury must decide allegations that a person is sexually violent, and thus subject to commitment for treatment, when the person requests a jury trial. *See* WIS. STAT. § 980.05(2). Here, the circuit court selected thirteen jurors so that if a juror became ill or otherwise needed to be excused from the jury panel, there would still be twelve jurors to decide the case. After the evidence was presented and before deliberations began, a juror was randomly selected for release from the jury panel. Miller moved for mistrial based on the fact that the sole African-American juror was randomly selected. Because the African-American juror was *randomly chosen* to leave the jury, his release did not

run afoul of constitutional protections that prohibit the purposeful discrimination against “any group or class of persons.” See *Brown v. State*, 58 Wis. 2d 158, 163, 205 N.W.2d 566 (1973). Therefore, there would be no arguable merit to a claim that the circuit court erred in denying Miller’s motion for mistrial.

Miller argues in his response that he was denied due process because the psychologists who testified at his trial based their opinions about his risk to reoffend on outdated actuarial instruments. The psychologists who testified at trial explained how they assessed Miller’s risk. They also explained how the actuarial instruments they used evolved as more complete information became available. The trial testimony does not support Miller’s assertion that the assessment tools used by the State’s psychologists were invalid because they were based on outdated information. There would be no arguable merit to this claim.

Our independent review of the record does not disclose any other arguably meritorious issues for appeal. Because we conclude that there is no arguable merit to any issue that could be raised on appeal, we affirm the commitment order and relieve Attorney Jensen of further representation of Miller 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 Jeffrey W. Jensen is relieved of further representation of Jimmie Miller.

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

Sheila T. Reiff
Clerk of Court of Appeals