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DISTRICT III

December 4, 2019

To:

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

2018AP421-NM State of Wisconsin v. Branden S. Sustman (L. C. No. 2005CI2)

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).

Counsel for Brandon Sustman has filed a no-merit report concluding there is no basis to challenge an order issued after a jury trial denying a petition for discharge from his WIS. STAT. ch. 980 (2017-18)¹ commitment. Sustman was advised of his right to respond and has not

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no merit to any issue that could be raised on appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

Sustman filed a petition for discharge from his WIS. STAT. ch. 980 commitment, alleging his condition had changed since his last petition and he no longer met the criteria for commitment as a sexually violent person. At Sustman's jury trial on the discharge petition, Dr. Amelia Frystrom, a treatment evaluator at Sand Ridge Secure Treatment Center, testified about Sustman's most recent treatment progress report. Frystrom testified at length about the contents of the report, which chronicled numerous difficulties Sustman had in his treatment programming, such as: sexual activity with other Sand Ridge patients; numerous rule violations, including disrespectful and disruptive behavior, lying and theft; a failed sexual maintenance polygraph assessment for being deceptive and untruthful; and failure to cooperate with sexual deviant arousal testing.

Doctor Anthony Jurek testified he had performed WIS. STAT. ch. 980 evaluations of prisoners for eighteen years. Jurek diagnosed Sustman with pedophilic disorder based upon Sustman's repeated sexual offenses involving prepubescent children; and antisocial personality disorder with an associated conduct disorder. Further, Jurek opined that both the pedophilic and personality disorders predisposed Sustman to engage in acts of sexual violence. Jurek concluded to a reasonable degree of psychological certainty that Sustman was more likely than not to reoffend.

Doctor William Schmitt performed an evaluation of Sustman at the State's request, and he diagnosed Sustman with antisocial personality disorder. Schmitt noted Sustman's history of

engaging in prohibited sexual behavior with other patients while in treatment, such as exposing himself, masturbation in public, and sexual contact. Schmitt opined that Sustman had not been able to demonstrate sustained changes with his dynamic risk factors. He also testified that Sustman was “predisposed to future acts of sexual violence and that his risk [to reoffend] is greater than 50 percent.”

Sustman presented evidence that he did not suffer from a predisposing mental disorder under WIS. STAT. ch. 980. The jury found Sustman was “still a sexually violent person.” The circuit court entered an order denying Sustman’s petition for discharge.

The no-merit report addresses potential issues regarding whether sufficient evidence supported the jury’s verdict; whether the circuit court properly exercised its discretion by declining to excuse for cause a juror who experienced some dizziness; whether Sustman knowingly and voluntarily waived his right to testify; whether Sustman knowingly and voluntarily stipulated to having been previously convicted of a sexually violent offense; and whether Sustman received the effective assistance of counsel. Upon our independent review of the record, we agree with counsel’s description, analysis, and conclusion that any challenges to these issues would lack arguable merit, and we will not further address them.

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that attorney Dennis Schertz is relieved of further representing Branden Sustman 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