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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 III

September 27, 2022

To:

Hon. Rian Radtke
Circuit Court Judge
Electronic Notice

Michelle Weisenberger
Clerk of Circuit Court
Trempealeau County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Jefren E. Olsen
Electronic Notice

George R. Kinser
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:

2022AP203-NM State of Wisconsin v. George R. Kinser
(L. C. No. 2018CI1)

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

George Kinser appeals an order committing him as a sexually violent person pursuant to WIS. STAT. ch. 980 (2019-20).¹ Attorney Jefren Olsen has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32. Kinser was advised of his right to respond to the no-merit report, but he has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

In October 2018, the State filed a petition to commit Kinser as a sexually violent person under WIS. STAT. ch. 980. Following a probable cause hearing, the circuit court determined that there was probable cause to believe that Kinser was a sexually violent person within the meaning of WIS. STAT. § 980.01(7). Kinser then demanded a jury trial and waived his right to have the trial take place within ninety days of the probable cause hearing. *See* WIS. STAT. § 980.05(1).

A jury trial was initially scheduled for February 2019. The trial was postponed, however, on multiple occasions. In September 2020, Kinser and the State waived their respective rights to a jury trial and agreed that the case would instead be tried to the court. A two-day bench trial ultimately took place in April 2021.

At the beginning of trial, Kinser stipulated to two of the three elements that the State needed to prove to prevail on its petition to commit him under WIS. STAT. ch. 980. Specifically, Kinser stipulated that he had been convicted of two sexually violent offenses and that he had a “mental disorder,” as that term is defined in WIS. STAT. § 980.01(2). *See* WIS JI—CRIMINAL 2502 (2021). The circuit court accepted Kinser’s stipulations to those elements after conducting a colloquy to ensure that Kinser was entering into the stipulations knowingly, intelligently, and voluntarily.

As a result of Kinser’s stipulations, the only disputed issue at trial was whether Kinser was dangerous because his mental disorder made it more likely than not that he would engage in one or more future acts of sexual violence. *See* WIS JI—CRIMINAL 2502 (2021). To establish that element, the State relied on the testimony and reports of psychologist Melissa Westendorf.

Based on her review of Kinser's records and Kinser's scores on the Static-99R, the Stable-2007, and the Psychopathy Checklist-Revised (PCL-R), Westendorf determined, to a reasonable degree of psychological certainty, that Kinser's risk of committing a future act of sexual violence exceeded fifty percent. In other words, Westendorf concluded it was more likely than not that Kinser would commit a future act of sexual violence.

Two expert witnesses testified on Kinser's behalf—psychologists Sharon Kelley and Sheila Fields. Both Kelley and Fields scored Kinser on the Static-99R, the VRS-SO, and the PCL-R. Based on their reviews of Kinser's records and Kinser's scores on the various actuarial assessments, both Kelley and Fields opined, to a reasonable degree of professional certainty, that Kinser's risk of committing a future act of sexual violence was below fifty percent.

After considering the stipulations, the expert witnesses' testimony, and the parties' closing arguments, the circuit court concluded that the State had established all three of the elements necessary to prove that Kinser is a sexually violent person under WIS. STAT. ch. 980. The court therefore entered an order committing Kinser to the Wisconsin Department of Health Services for control, care, and treatment.

The no-merit report addresses whether there would be arguable merit to a claim challenging Kinser's commitment order based on: (1) the delay in bringing Kinser to trial; (2) the lack of a colloquy regarding Kinser's waiver of his right to a jury trial; (3) evidentiary issues that arose during trial; (4) the lack of a colloquy regarding Kinser's waiver of his right to testify at trial; and (5) the sufficiency of the evidence to support the circuit court's determination that Kinser is a sexually violent person. We agree with counsel's description, analysis, and conclusion that these potential issues lack arguable merit, and we therefore do not address them

further. We further conclude, based upon our independent review of the record, that there would be no arguable merit to a claim that Kinser's trial attorney was constitutionally ineffective.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Jefren Olsen is relieved of further representing George Kinser 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