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**DISTRICT II**

February 1, 2023

To:

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

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2021AP2147-CR

State of Wisconsin v. Jason L. Grant (L.C. #2014CF471)

Before Gundrum, P.J., Neubauer and Grogan, 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).**

Jason L. Grant appeals from an order denying his petition seeking conditional release under WIS. STAT. § 971.17(4) (2019-20).<sup>1</sup> Grant claims there is insufficient evidence to show that he presented a significant risk of harm to himself, others, or to property. Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

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

In November 2014, the State charged Grant with attempted first-degree intentional homicide, strangulation and suffocation, and false imprisonment, all as a repeater, contrary to Wis. STAT. §§ 940.01(1)(a) (2013-14), 939.32 (2013-14), 940.235(1) (2013-14), 940.30 (2013-14), and 939.62 (2013-14). These charges stemmed from an incident where Grant stabbed and strangled a woman and refused to let her leave her apartment just seven days after Grant had been released from prison. Grant entered into a plea bargain with the State where he pled guilty to all three counts in exchange for an agreement that the circuit court find Grant not guilty by reason of mental disease or defect. The circuit court accepted the agreement and committed Grant for sixty years.

In September 2020,<sup>2</sup> Grant filed a petition seeking conditional release from Mendota Mental Health Institute (Mendota), the institution to which he was committed. The circuit court held an evidentiary hearing where two experts testified. Dr. Brooke Lundbohm, the court-appointed psychologist who evaluated Grant, testified that Grant should not be released because Grant posed “*a significant risk of bodily harm to himself, others, or property.*” Dr. Lundbohm explained that Grant had bipolar disorder and a long history of abusing drugs and dealing controlled substances. She told the court that while Grant had progressed in his treatment, he still craved the rush he got from selling drugs, and it would be difficult for him to refrain from returning to that practice if released. Dr. Lundbohm had concerns about Grant’s lack of impulse control, which could affect his ability to successfully function in a less restricted setting, as evidenced by Grant’s conduct the last time he was released to the community. She

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<sup>2</sup> Grant had filed another Petition for Conditional Release in May 2020, but he withdrew it in July 2020.

noted that Grant remained in the medium-security unit because his anxiety about having a roommate prevented him from progressing to a less restricted, lower-security unit.

Dr. Robert Rawski, whom the circuit court appointed at Grant's request for a second opinion, came to a different conclusion. Dr. Rawski told the court that Grant no longer posed a substantial risk of harming himself, others, or property. He opined that as long as Grant takes his medication, he will not be violent and recommended that Grant be released to a group home to help him transition back to the community.

The circuit court considered the testimony of both experts but had concerns, including that Grant had failed when on community supervision in the past. This caused the court to doubt Dr. Rawski's opinion, particularly since the crimes underlying this commitment occurred shortly after Grant had been released from prison. The court also saw Dr. Rawski's recommendation as suspect because it did not consider Grant's prior criminal history or his ability to succeed in a less structured and less secure setting. The court was concerned with Grant's inability to control his impulses, and although Grant did well when on medication, Grant's release plan was vague, which could result in Grant going off his medication and returning to criminal behavior upon release.

The circuit court, after weighing the testimony of both experts and the evidence presented, concluded that Dr. Lundbohm's recommendation was more persuasive. The court noted Grant's significant mental health history, his history of substance abuse, his failure to succeed while on supervision in the past, his failure to have a specific plan if released, concerns about how he would manage in a less secure setting, and the horrific nature of the crime for which Grant was committed. The court also acknowledged that Grant had not had a manic

episode since 2015, that while medicated, Grant’s bipolar disorder was stable, and that Grant’s behavior “since he arrived at Mendota approximately one year ago is good.” After considering all of the evidence and the legal standard, however, the court found that it would be unsafe to release Grant. It found:

by clear and convincing evidence that Mr. Grant would pose a significant risk of bodily harm to himself or others or of serious property damage if he were conditionally released. The magnitude of the severity and savagery of this attempted homicide and the risk to the public outweighs the progress that he has made with his mental health.

The court denied the petition. Grant now appeals.

We review the question of whether the evidence is sufficient to support the circuit court’s order denying Grant’s petition by determining whether there is credible evidence to support the decision. See *State v. Randall*, 2011 WI App 102, ¶¶13-14, 17, 336 Wis. 2d 399, 802 N.W.2d 194. If there is credible evidence to support the court’s decision, we affirm, even when “there may be evidence and inferences to the contrary.” *Id.*, ¶17. We also defer to the circuit court’s determinations on “credibility and evaluation of the evidence[.]” *Id.*, ¶14.

WISCONSIN STAT. § 971.17(4) governs conditional release. Paragraph 971.17(4)(d) requires the circuit court to “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.” The statute lists factors the court may consider in making its determination, including:

the nature and circumstances of the crime, the person’s mental history and present mental condition, where the person will live, how the person will support himself or herself, what arrangements are available to ensure that the person has access to and will take necessary medication, and what arrangements are possible for treatment beyond medication.

*Id.*

In reviewing the Record and the circuit court's decision, we conclude there is credible evidence to support the court's denial of Grant's petition. The court was presented with two conflicting opinions by the experts who evaluated Grant. Dr. Lundbohm believed Grant would be dangerous if released at this time, and Dr. Rawski believed that Grant would not be dangerous. The court carefully considered both opinions and found Dr. Lundbohm's recommendation to be more persuasive. We see no basis for us to reject the court's credibility decision.

Dr. Lundbohm's testimony was based on her training and experience, her interview with Grant, and her review of the relevant records. She believed Grant needed more time in Mendota's restricted setting before he would not be a threat to the public. To support her opinion, she pointed to Grant's anxiety over moving from the medium-security unit to a less restrictive unit due to the possibility of having a roommate, his vague plans for release, his continued cravings for the rush that drug dealing provided, his recent rule violations, his inability to cope with ordinary life stressors, his risk of returning to criminal behavior, and his failure to cope with the demands living independently in the community would require. The Record also reflects that Grant had a significant history of mental illness and criminal behavior coupled with a lack of impulse control and past struggles to succeed when released from prison. The crime for which Grant was committed was horrific and savage; the victim would have been killed had a neighbor not called 911. And that incident occurred only seven days after Grant was released from prison. The court considered these factors, consistent with WIS. STAT. § 971.17(4)(d).

Although Dr. Rawski believed Grant would not be a threat if released because Grant's mental illness is treatable and under control and because Grant committed the crime underlying

this case while he was not properly medicated, Dr. Rawski seemed to overlook or discount the valid concerns Dr. Lundbohm listed. And, under our standard of review, we affirm if there is any credible evidence to support the circuit court's decision, despite the fact that there may be evidence to the contrary. *Randall*, 336 Wis. 2d 399, ¶17. Here, as we have discussed, there was plenty of credible evidence to support the court's decision.

Therefore,

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 this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*