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**DISTRICT III**

May 16, 2023

To:

Hon. Tammy Jo Hock  
Circuit Court Judge  
Electronic Notice

John VanderLeest  
Clerk of Circuit Court  
Brown County Courthouse  
Electronic Notice

Winn S. Collins  
Electronic Notice

Dennis Schertz  
Electronic Notice

Steven L. Collins 256376  
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:

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2022AP342-NM                      State of Wisconsin v. Steven L. Collins (L. C. No. 2011CI1)

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).**

Steven L. Collins appeals an order denying his petition for discharge from his WIS. STAT. ch. 980 (2021-22)<sup>1</sup> commitment. His appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Collins has filed a response. Upon consideration of the no-merit report, Collins' response, and following our independent review of the record as mandated by *Anders*, we conclude there is no issue of

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

arguable merit that could be raised on appeal. We therefore summarily affirm the order. *See* WIS. STAT. RULE 809.21(1).

Collins was committed as a sexually violent person in 2018.<sup>2</sup> He filed a pro se petition for discharge on May 10, 2021, later filing an amended petition after the appointment of counsel. The amended petition relied on the annual examination report of psychologist Donn Kolbeck, dated April 7, 2021, and an April 30, 2021 treatment progress report by psychologist Darren Matusen.

Collectively, the reports supported both supervised release and discharge.<sup>3</sup> In opining that Collins had made significant progress in treatment, Matusen noted Collins had advanced to the third and final treatment phase at Sand Ridge Secure Treatment Center on March 17, 2021. Matusen also described Collins' completion of a sexual fantasies and masturbation (SFM) polygraph in March 2021, in which a polygraph examiner determined that Collins was being truthful when he replied that he had not masturbated while fantasizing about forced sexual contact. Kolbeck concluded Collins met the criteria for discharge from his commitment, stating that although Collins had a qualifying mental disorder, his risk to reoffend was below the legal threshold of "more likely than not." Using the Static-99R and VRS-SO instruments, Kolbeck estimated Collins' lifetime reoffense risk was "about 43%," with a "95% probability that the actual risk is within the confidence interval of 33% to 53%."

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<sup>2</sup> The petition was originally filed in 2011, but it appears from the appellate record that the proceedings were prolonged by Collins' transfer to the custody of the Department of Corrections and a hung jury during his initial commitment trial.

<sup>3</sup> Although this appeal is solely concerned with the denial of Collins' discharge petition, the facts we set forth regarding supervised release are relevant to circuit court's discharge determination and Collins' response arguments.

The State opposed Collins' discharge petition. It noted that Collins had received a discharge trial just a few months prior, at which time the circuit court, acting as fact finder, concluded he remained a sexually violent person. The State argued that setting the matter for a discharge trial was not warranted, as "this would in essence be a repeat of the same trial from November of 2020." The State requested that the court deny the petition as facially insufficient under WIS. STAT. § 980.09(1), which requires dismissal "unless the petition alleges facts from which the court or jury would likely conclude the person's condition has changed since the most recent order denying a petition for discharge after a hearing on the merits." Alternatively, the State requested a hearing under § 980.09(2) to determine, based on the totality of the record, if the petition was sufficient.

The circuit court set the matter for a hearing. The State pointed out that Kolbeck had testified at the November 2020 trial. At that time, Kolbeck testified that Collins suffered from other specified personality disorder with antisocial features; that diagnosis remained unchanged in Kolbeck's April 2021 re-examination report. In both instances, Kolbeck opined that this disorder was a qualifying mental disorder under WIS. STAT. ch. 980. In both his trial testimony and his re-examination report, Kolbeck applied the Static-99R and VRS-SO to estimate Collins' risk of reoffending. At the November 2020 trial, Kolbeck estimated Collins' lifetime reoffense risk at forty-five percent. In April 2021, Kolbeck estimated Collins' lifetime reoffense risk at about forty-three percent.

The circuit court determined that there had not been a sufficient change in Collins' condition since the last discharge trial so as to establish that a court or jury would likely conclude he no longer met the criteria for commitment. The court acknowledged that in the interim Collins had advanced to phase three of his treatment and had passed an SFM polygraph,

demonstrating some progress in treatment. It determined that given the short time period that had elapsed, these matters were not likely to persuade a fact finder that Collins no longer met the criteria for commitment as a sexually violent person.

The no-merit report addresses whether the circuit court erred in denying Collins' petition without a hearing under WIS. STAT. § 980.09(1). Because the court *did* hold a hearing, we view this as a denial under § 980.09(2). The specific statutory subsection under which the court proceeded, though, is not a critical factor to this no-merit appeal. Both subsections obligate the court to deny the petition unless there are facts from which the fact finder would likely conclude that the person no longer meets the criteria for commitment. Whether a petition satisfies this standard is a question of law. *See State v. Hager*, 2018 WI 40, ¶32, 381 Wis. 2d 74, 911 N.W.2d 17.

Here, any argument that Collins' discharge petition met the WIS. STAT. § 980.09(2) standard would be frivolous. A fact finder had heard virtually the same testimony from Kolbeck just months earlier and rejected it. Considering the entire record, the slight reduction in Kolbeck's estimate of Collins' reoffense risk is not evidence from which a circuit court or jury would likely conclude that Collins is no longer a sexually violent person. The court correctly applied the appropriate legal standard and did not engage in an impermissible weighing of the evidence. *See Hager*, 381 Wis. 2d 74, ¶30.

In his response, Collins asserts that if one compares Kolbeck's April 27, 2020 re-examination report with Kolbeck's April 7, 2021 re-examination report, it is obvious there are "new factors." While it appears Collins has made laudable treatment gains, substantial progress in treatment is not a requirement for discharge. Discharge is warranted only if the person no

longer meets the criteria for commitment as a sexually violent person—e.g., a qualifying mental disorder and a reoffense risk that exceeds the “more likely than not” threshold. *See* WIS. STAT. §§ 980.01(7), 980.09(3). Treatment gains are relevant to this inquiry only insofar as such treatment affects the existence of a qualifying mental disorder or estimates of the individual’s reoffense risk. Here, there was virtually no change in those matters.

Collins’ response also argues that the circuit court’s decision was largely based on the short period of time that had elapsed between the last discharge trial and his discharge petition. He contends that this reasoning runs afoul of WIS. STAT. § 980.09(1), which permits a committed person to seek discharge at any time. Based upon our review of the appellate record, any such argument would be frivolous. The court’s comments about the short time period were in response to Collins’ counsel’s assertion that a discharge trial was warranted because Collins had advanced to phase three of his treatment. The court’s point was that Collins had been participating in phase three treatment for such a short period of time that his advancement alone was unlikely to have any bearing on the fact finder’s assessment of risk. This conclusion was buttressed by Kolbeck’s report, which estimated only a two percent reduction in reoffense risk.

Our independent review of the record has disclosed no other potentially meritorious issues.

Upon the foregoing,

IT IS ORDERED that the September 27, 2021 order denying the petition for discharge is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved of any further representation of Steven Collins in this matter pursuant to WIS. STAT. RULE 809.32(3).

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*