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**DISTRICT II**

February 28, 2024

To:

Hon. Daniel J. Bissett  
Circuit Court Judge  
Electronic Notice

Tara Berry  
Clerk of Circuit Court  
Winnebago County Courthouse  
Electronic Notice

Colleen Marion  
Electronic Notice

Jennifer L. Vandermeuse  
Electronic Notice

James E. Shields  
Mendota Mental Health Inst.  
301 Troy Dr.  
Madison, WI 53704

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

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2022AP1403-CRNM      State of Wisconsin v. James E Shields (L.C. #2006CF682)

Before Neubauer, Grogan and Lazar, 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).**

James E. Shields appeals from an order denying his petition for conditional release under WIS. STAT. § 971.17(4) (2021-22).<sup>1</sup> His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Shields received a copy of the report, was advised of his right to file a response, and has not responded. Upon consideration of the report and an independent review of the Record, we conclude that the order

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

may be summarily affirmed because there are no issues with arguable merit for appeal. *See* WIS. STAT. RULE 809.21.

In 2006, the State charged Shields with first-degree intentional homicide for killing his neighbor by stabbing him multiple times. Ultimately, Shields pled guilty, but not guilty by mental disease/defect, to the charge. The circuit court committed Shields to the Department of Health Services for life. Shields has filed many petitions for conditional release, beginning in 2008. This no-merit appeal involves Shields' 2021 petition.

After Shields filed his petition, the circuit court appointed Dr. Kevin Miller, a licensed psychologist, to examine Shields. At an evidentiary hearing on the petition, Miller testified that he believed Shields continued to pose a significant risk of bodily harm to himself and others. Most concerning to Miller were statements made during his examination of Shields. Significantly, Shields told Miller on three occasions that if he were released in the community and someone was "meddling with him" by not "mind[ing] their own business as it relates to him," that Shields would kill that person and feel justified in doing so. Miller noted the similarities between those statements and the underlying offense where Shields advised Miller that he killed his neighbor because "the man was asking him questions ... about his whereabouts or ... keeping an eye on him somehow from an upstairs apartment and making some noise." Ultimately, the court denied the petition, finding that the State had met its burden of showing by clear and convincing evidence that Shields poses a danger to himself and others. This no-merit appeal follows.

The no-merit report first addresses whether there was compliance with the procedural requirements regarding conditional release proceedings. We agree with counsel’s analysis and conclude there is no arguable merit to this issue.

The no-merit report then addresses whether the evidence was sufficient to support the circuit court’s order denying Shields’ petition for conditional release. Pursuant to WIS. STAT. § 971.17(4)(d), the court “shall 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.” A circuit court determines dangerousness by considering the statutory factors in § 971.17(4)(d)<sup>2</sup> and “balancing of society’s interest in protection from harmful conduct against the acquittee’s interest in personal liberty and autonomy.” See *State v. Randall* (“*Randall III*”), 2011 WI App 102, ¶15, 336 Wis. 2d 399, 802 N.W.2d 194 (citation omitted).

In reaching its decision, the circuit court cited the proper legal standard. See WIS. STAT. § 971.17(4)(d). The court also considered the statutory factors. It ultimately concluded:

the nature and circumstances of the crime, Mr. Shields’ mental history and present mental condition are significant in this case, and I think the statements that he’s made to the doctor in the most recent interview are also very concerning, and I think they are of the nature that he does -- Mr. Shields does pose a significant risk of bodily harm to others as well as to himself. I do think that the

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<sup>2</sup> WISCONSIN STAT. § 971.17(4)(d) provides, in relevant part, that the court may consider:

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.

standard here is met, that being clear and convincing evidence, that Mr. Shields would pose that significant risk.

When reviewing the sufficiency of the evidence, “we give deference to the [circuit] court’s determination of credibility and evaluation of the evidence and draw on its reasoning and adopt the [circuit] court’s reasonable inferences.” *Randall III*, 336 Wis. 2d 399, ¶14. Nothing in the Record or the no-merit report evidences that there would be any arguable merit to challenging the weight or credit the circuit court afforded Miller’s testimony or the court’s finding that Shields remains a danger to himself or others. Accordingly, we agree with counsel’s conclusion that there would be no arguable merit to challenging the court’s discretionary decision to deny Shields’ petition for conditional release.

Our independent review of the Record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Colleen Marion of further representation in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Colleen Marion is relieved of further representation of James E. Shields in this matter. *See* WIS. STAT. RULE 809.32(3).

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*