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DISTRICT IV

March 21, 2013

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

2012AP2149-NM

In re the commitment of Frank A. Normington: State of Wisconsin
v. Frank A. Normington (L.C. #1997CV407B)

Before Lundsten, P.J., Sherman and Kloppenburg, JJ.

Frank Normington appeals an order that denied his petition for supervised release from a commitment as a sexually violent person under Chapter 980 of the Wisconsin Statutes. Attorney Dustin Haskell has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT.

RULE 809.32 (2011-12);¹ *see also Anders v. California*, 386 U.S. 738, 744 (1967), and *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the circuit court's determination that supervised release was not warranted. Normington was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues and affirm the order denying supervised release.

A person committed under Chapter 980 may petition the court for supervised release when at least twelve months have elapsed since the initial commitment or the last decision on supervised release. WIS. STAT. § 980.08(1). The circuit court shall order an examination and shall hear the matter without a jury. WIS. STAT. § 980.08(3) and (4). When reviewing a decision on supervised release, this court undertakes an independent review of the sufficiency of the evidence to sustain the burden of proof. *State v. Brown*, 2005 WI 29, ¶7, 279 Wis. 2d 102, 693 N.W.2d 715.

A circuit court may not authorize supervised release unless the petitioner provides clear and convincing evidence that: (1) the person has made significant progress in treatment that can be sustained on supervised release; (2) it is substantially probable that the person will not engage in an act of sexual violence while on supervised release; (3) a qualified provider of treatment that meets the person's needs is reasonably available; (4) the person can be reasonably expected to comply with his or her treatment requirements and all conditions of supervised release imposed

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

by the court or the department; and (5) a reasonable level of resources can provide the level of residential placement, supervision and ongoing treatment needs that are required for the safe management of the person. WIS. STAT. § 980.08(4)(cg) (2007-08); *State v. Rachel*, 2010 WI App 60, ¶¶16, 18, 31, 324 Wis. 2d 465, 782 N.W.2d 443.

Here, Dr. Craig Rypma conducted the evaluation and submitted a report to the court. At the hearing, Rypma testified that Normington's progress in treatment had been negligible, and that he would be unlikely to comply with all the rules of supervised release. Dr. Stephen Kopetskie, a treatment evaluator at the Sand Ridge Secure Treatment Center, also testified that Normington had not met the criteria for supervised release because he had withdrawn from treatment and did not have insight into the connection between his thoughts, emotions, behaviors and reoffending.

The circuit court found that Normington had made the required showing on the second, third and fifth factor, but not on the first or fourth factors. The court noted the incongruity of its finding that Normington was not eligible for supervised release, notwithstanding that the court's ruling on the second factor—that Normington was unlikely to commit future acts of sexual violence—would have been sufficient to grant a discharge petition. We agree with both the circuit court and counsel's assessment that all five criteria are mandatory, and Normington failed to satisfy his burden of proof on two of them.

Upon our independent review of the record, we have found no other arguable basis for reversing the order denying supervised release. See *State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

IT IS ORDERED that the order denying supervised release is summarily affirmed under WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Dustin Haskell is relieved of any further representation of Normington in this matter. *See* WIS. STAT. RULE 809.32(3).

*Diane M. Fremgen
Clerk of Court of Appeals*