

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 15, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP2413

Cir. Ct. No. 1996CF962979

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN RE COMMITMENT OF STANLEY EDWARD MARTIN, JR.:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

STANLEY EDWARD MARTIN, JR.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
DANIEL L. KONKEL, Judge. *Affirmed.*

Before Wedemeyer, Fine and Kessler, JJ.

¶1 PER CURIAM. Stanley Edward Martin, Jr. appeals from an order denying reconsideration of his motions challenging his civil commitment. The

issue is whether Martin's civil commitment as a sexually violent person was based on charges that had been dismissed, rendering void the basis for his commitment. We conclude that the basis for Martin's civil commitment as a sexually violent person was based on his 1988 conviction for second-degree sexual assault as a habitual criminal, and other convictions where he committed acts of sexual violence incident to those convictions. Therefore, we affirm.

¶2 The State's civil commitment petition alleges that in 1988, Martin was convicted of second-degree sexual assault as a habitual criminal, in violation of WIS. STAT. §§ 940.225(2)(a) (1987-88) and 939.62 (1987-88). The trial court imposed a sixteen-year sentence to run consecutive to another sentence he was serving. A jury found that Martin was "a sexually violent person as alleged in the petition." The trial court committed Martin to the custody of the Department of Health and Social Services for Martin's control, care and treatment until he was no longer a sexually violent person.

¶3 In 2005, Martin moved "to vacate/dismiss/discharge" him from the commitment, contending that his commitment was based on charges involving sexual misconduct that were dismissed incident to a plea bargain. The trial court denied the motion. Martin sought reconsideration, which the trial court also denied. Martin appeals.

¶4 Preliminarily, the State contends that Martin's appeal should be dismissed because he appealed from the order denying reconsideration rather than from the original order, when Martin's reconsideration motion raised the same issues as those in his original motion. *See Silverton Enters., Inc. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). Martin's notice of appeal, however, was filed within forty-five days of the original order denying

Martin's motion; consequently, we have jurisdiction to review these orders and their attendant proceedings. *See* WIS. STAT. § 808.04(1) (2005-06).¹ Additionally, the State urges us to affirm as a sanction for Martin's failure to ensure that the appellate record was complete. *See Fiumefreddo v. McLean*, 174 Wis. 2d 10, 27, 496 N.W.2d 226 (Ct. App. 1993). Rather than affirming on that basis, we affirm this appeal on its merits notwithstanding the sparseness of the appellate record.

¶5 Martin contends that his civil commitment was based on charges that were dismissed pursuant to a plea bargain; consequently, he contends that his commitment order should be vacated. He contends that his civil commitment as a sexually violent person, pursuant to WIS. STAT. § 980.01(7) (1995-96), is predicated on the charges of rape and attempted murder, which were plea-bargained to injury by conduct regardless of life, and predicated on the charges of second-degree sexual assault and threat to injure as a repeater, which were plea-bargained to endangering safety by conduct regardless of life.

¶6 The State proved Martin's status as a sexually violent person, by presenting evidence of his sexually violent conduct that led to the ultimate convictions for injury by conduct regardless of life, and endangering safety by conduct regardless of life. More significantly, Martin was also convicted of second-degree sexual assault as a habitual criminal in 1988. That conviction qualifies as a sexually violent offense pursuant to WIS. STAT. § 980.01(6) (1995-

¹ The appellate record is sparse; however, the trial court's August 25, 2006 order is within forty-five days of Martin's notice of appeal filed September 28, 2006, as well as the trial court's reconsideration order of September 8, 2006.

All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

96). Consequently, Martin's civil commitment as a sexually violent person was based on the qualifying offense of his conviction for second-degree sexual assault, and on other sexual misconduct underlying the other two convictions. Therefore, his contention – that his commitment order was improperly based on charges that were dismissed – is fallacious, as is his renewed contention on reconsideration.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

