

**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. 2007AP823

Cir. Ct. No. 1995CV1036

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE COMMITMENT OF RUVEN G. SEIBERT:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

RUVEN G. SEIBERT,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County:
DEE R. DYER, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Ruven Seibert appeals an order denying his petition for discharge from his WIS. STAT. ch. 980 commitment.¹ Seibert argues that because an examiner's report plausibly established that he is no longer a sexually violent person, he was entitled to a full evidentiary hearing on his discharge petition. We reject Seibert's arguments and affirm the order.

BACKGROUND

¶2 In 1996, a jury found Seibert was a sexually violent person within the meaning of WIS. STAT. ch. 980. In March 2006, Dr. David E. Warner prepared a report of his periodic re-examination of Seibert, pursuant to WIS. STAT. § 980.07(2), and opined that Seibert remained a sexually violent person. When informed of the re-examination, Seibert refused to waive his right to petition the court for discharge from his commitment. *See* WIS. STAT. § 980.09(2)(a). At Seibert's request for an independent examination under WIS. STAT. § 980.03(4), the circuit court appointed Dr. Terrence Campbell to evaluate Seibert and file a written report.

¶3 Pursuant to WIS. STAT. § 980.09(2)(a), the court held a probable cause hearing to determine whether facts existed to warrant an evidentiary hearing on whether Seibert was still a sexually violent person. After reviewing the doctors' respective reports, the court denied Seibert's petition and this appeal follows.

¹ The parties agree that the instant proceedings are governed by the provisions in the 2003-04 statutes. Therefore, all references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

DISCUSSION

¶4 Seibert argues the trial court erred by denying his discharge petition without a full evidentiary hearing. WISCONSIN STAT. § 980.09(2) governs the present discharge petition and provides, in relevant part:

(a) A person may petition the committing court for discharge from custody or supervision without the secretary's approval. At the time of an examination under s. 980.07(1), the secretary shall provide the committed person with a written notice of the person's right to petition the court for discharge over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall forward the notice and waiver form to the court with the report of the department's examination under s. 980.07. If the person does not affirmatively waive the right to petition, the court shall set a probable cause hearing to determine whether facts exist that warrant a hearing on whether the person is still a sexually violent person. The committed person has a right to have an attorney represent him or her at the probable cause hearing, but the person is not entitled to be present at the probable cause hearing.

(b) If the court determines at the probable cause hearing under par. (a) that probable cause exists to believe that the committed person is no longer a sexually violent person, then the court shall set a hearing on the issue

¶5 This court has held that WIS. STAT. § 980.09(2)(a) “does not contemplate an evidentiary-type hearing like that provided in § 980.09(2)(b).” *State v. Paulick*, 213 Wis. 2d 432, 438, 570 N.W.2d 626 (Ct. App. 1997). Rather, the probable cause hearing is a “paper review to determine whether sufficient facts exist to warrant a full evidentiary hearing on whether the committed person is still a sexually violent person.” *State v. Thayer*, 2001 WI App 51, ¶17, 241 Wis. 2d 417, 626 N.W.2d 811. A full evidentiary hearing is not warranted if the only evidence before the court indicates that the grounds for the original commitment remain current and relevant. *Id.*, ¶26.

¶6 Although a petitioner does not have the burden of persuasion, the committed person must present some evidence “that there is a real question as to whether he or she is still dangerous.” *Id.*, ¶28. Thus, “some weighing of factual evidence must take place if the court is to determine if some evidence exists sufficient to warrant an evidentiary hearing.” *Id.* In assessing one or more re-examination reports at a probable cause hearing, the court “is to determine whether there is a plausible expert opinion that, if believed, would establish probable cause to believe a person is no longer a sexually violent person within the meaning of the statute.” *State v. Kruse*, 2006 WI App 179, ¶30, 296 Wis. 2d 130, 722 N.W.2d 742. However, where there are two conflicting opinions on this point, “the court does not decide which it finds the more persuasive.” *Id.* “[I]n order to provide a basis for probable cause to believe a person is no longer sexually violent under § 980.09(2), an expert’s opinion must depend upon something more than facts, professional knowledge, or research that was considered by an expert testifying in a prior proceeding.” *State v. Combs*, 2006 WI App 137, ¶32, 295 Wis. 2d 457, 720 N.W.2d 684.

¶7 Here, Warner noted:

In the past, Mr. Seibert has displayed a callous attitude toward his victims and a willingness to sexually assault nonconsenting females. Because he has refused to participate in SVP treatment for the last several years, it is unlikely that he has identified or modified his distorted attitudes regarding sexually violent behavior.

Warner further opined that Seibert’s age and physical ailments had not diminished his risk for future sexually violent behavior to a level that could be managed safely in the community. Noting that Seibert remained a sexually violent person who had not reduced his risk for sexually violent behavior to a “less likely than not”

level, Warner recommended against discharging Seibert from his WIS. STAT. ch. 980 commitment.

¶8 Campbell submitted a fifty-two-page report in which only the last page and one-half discuss Seibert’s current mental disorder and risk to reoffend. Although Campbell notes that “the best estimates of [Seibert]’s sexual reoffending risk over the next 10 years ranges between 7% and 14%,” Campbell did not render a specific opinion on whether Seibert remains a sexually violent person under statutory provisions, nor whether Seibert should be discharged from his WIS. STAT. ch. 980 commitment.

¶9 Citing *Combs*, Seibert nevertheless argues he is entitled to an evidentiary hearing because Campbell relied upon new research concerning sexual offender recidivism risk. Although *Combs* suggests that a change in the research or writings on how professionals are to score and interpret actuarial instruments may provide a basis for probable cause to believe a person is no longer sexually violent under WIS. STAT. § 980.09(2), *see Combs*, 295 Wis. 2d 457, ¶32, it does not relieve an expert from incorporating that research into a report that provides a conclusion that the committed person is no longer sexually violent. Because Campbell’s report did not render an ultimate opinion establishing probable cause to believe Seibert is no longer a sexually violent person within the meaning of the statute, *see Kruse*, 296 Wis. 2d 130, ¶30, the circuit court properly denied Seibert’s discharge petition without a full evidentiary hearing.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2005-06).

