

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 10, 2012

A. John Voelker
Acting 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. 2010AP2173

Cir. Ct. No. 1996CF961237

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN RE THE COMMITMENT OF L. C. STREETER:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

L. C. STREETER,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JEFFREY A. KREMERS, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. L.C. Streeter appeals from an order of the circuit court denying his petition for release from his commitment as a sexually violent

person. *See* WIS. STAT. ch. 980 (2009-10).¹ Streeter asserts that the State failed to meet its burden of proof. We disagree with that contention and affirm the order.

¶2 In March 1996, the State petitioned to have Streeter committed as sexually violent. The circuit court so ordered in October 1996. In February 2009, Streeter petitioned for supervised discharge. *See* WIS. STAT. § 980.08. In July 2009, he withdrew his petition for supervised discharge and sought ordinary discharge. *See* WIS. STAT. § 980.09. He alleged that the professional conducting his annual review “has opined that Streeter may not meet criteria for continued commitment under Chapter 980.” The circuit court concluded that Streeter was entitled to a full evidentiary hearing. *See* WIS. STAT. § 980.09(2).

¶3 The hearing—effectively, a trial to the court—commenced on November 30, 2009. The circuit court concluded that Streeter remained sexually violent, and it denied his release petition. Streeter appeals. Additional facts will be discussed below as necessary.

¶4 “A committed person may petition the committing court for discharge at any time.” WIS. STAT. § 980.09. When, as here, the circuit court determines that the petition “contains facts from which the court or jury may conclude that the person does not meet the criteria for commitment as a sexually violent person[,]” the court shall set the matter for a hearing. *See* WIS. STAT. § 980.09(2). At the hearing, the State “has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment as a

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

sexually violent person.” WIS. STAT. § 980.09(3). If the State fails to fulfill its burden, the petitioner is to be discharged. WIS. STAT. § 980.09(4).

¶5 To prove a petitioner is a sexually violent person, the State must show three things: that the person has been convicted of a sexually violent offense; that the person has a mental disorder; and that the person is dangerous to others because he has a mental disorder which makes it more likely than not that he will engage in one or more future acts of sexual violence. *See* WIS JI—CRIMINAL 2502; WIS. STAT. § 980.01(7). A “sexually violent offense” includes first- and second-degree sexual assaults. *See* WIS. STAT. § 980.01(6). A “mental disorder” is a “congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence.” WIS. STAT. § 980.01(2).

¶6 Streeter does not dispute that he was previously convicted of a sexually violent offense. He was convicted of two counts of first-degree sexual assault in 1977, and one count of second-degree sexual assault in 1986.² Streeter also does not appear to dispute that he has been diagnosed with a mental disorder. Two experts diagnosed personality disorder, not otherwise specified. Paraphilia had also been mentioned by multiple treatment providers.³ It appears the diagnoses were based, in part, on Streeter’s prior known behaviors.

² Streeter was sentenced to seven years’ imprisonment, concurrent, for the 1977 assaults and ten years’ imprisonment for the 1986 assault. It is not clear which sentence—if, in fact, it was either sentence—was ending in 1996 when the State originally petitioned for Streeter’s commitment.

³ The personality disorder involves disregard for, and violation of, the rights of others. Paraphilia involves recurrent, sexually arousing fantasies, urges, or other behaviors that may center around, among other things, nonconsenting sexual partners.

¶7 Streeter’s dispute is with the circuit court’s conclusion that he has a mental disorder that makes him *more likely than not* to engage in one or more future acts of sexual violence. He contends that the State failed to meet its burden, and that the circuit court neglected to articulate how the State succeeded and Streeter failed to make a case.⁴

¶8 We review the circuit court’s conclusion here by utilizing a sufficiency of the evidence standard. *See State v. Brown*, 2005 WI 29, ¶¶5, 42, 279 Wis. 2d 102, 693 N.W.2d 715. This is the same standard we use when reviewing criminal convictions: this court “may not reverse a conviction unless the evidence, viewed most favorably to the State and conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *Id.*, ¶39. In other words, the test here is “whether a circuit court, acting reasonably, could be ... convinced by evidence it has a right to believe and accept as true” that Streeter is a sexually violent person. *See id.*, ¶40. Witness credibility and the weight of evidence are left to the circuit court, and if multiple reasonable

⁴ In rendering its decision, the circuit court presciently observed:

[I]t is a curious difference than if this were a jury deciding Mr. Streeter’s issue. They would simply answer the question yes or no and they would not be asked to explain their reason, nor could they be challenged on their reason.... But when it is a court trial, judges are supposed to do more than just say yes or no and we have to explain our reason.

Obviously it would be a lot easier to say yes or no and not have to give one’s reasons. There are explanations for that and I’m not bemoaning the fact that I have to explain my rationale, but in doing so, a court always risks that when they go about the businesses of listing things that were significant to them, somebody will say, why didn’t you say this?

inferences are supported by the evidence, we adopt that which supports the circuit court. *Id.*

¶9 Streeter first complains that the State failed to submit sufficient evidence “that provides the nexus to [his] dangerousness, and the presence of mental disorder that makes it likely that he ... will engage in sexual violence.” Streeter’s argument in this regard, though confusing, appears to focus on the word “dangerous” in the definition of “sexually violent person.”⁵ He asserts that “[w]ith fourteen years of records, the state was only able to produce evidence of four incidents of inappropriate behavior, none of which implicate an ability to refrain from activity dangerous to others. ... The trial court, in its ruling, did not specify which traits or actions show that Mr. Streeter’s dangerousness.”

¶10 However, dangerousness is not a separate element. It is the existence of a mental disorder *that makes the person likely to engage in sexual violence* which demonstrates the danger. See *State v. Laxton*, 2002 WI 82, ¶15, 254 Wis. 2d 185, 647 N.W.2d 784 (“[T]he presence of a mental disorder—under which a ‘critical distinguishing feature’ consisted of a serious lack of ability to control behavior—draws the line between a *dangerous sexual offender* ... and the typical recidivist.”) (emphasis added; citation omitted). In other words, dangerousness implicitly exists where the State can show the required elements.

¶11 The relevant question—whether Streeter has a mental disorder that makes him likely to engage in sexual violence—relates to Streeter’s second

⁵ Again, as defined by WIS. STAT. § 980.01(7), a “sexually violent person” is “a person who has been convicted of a sexually violent offense ... and *who is dangerous* because he or she suffers from a mental disorder that makes it likely that the person will engage in one or more acts of sexual violence.” (Emphasis added.)

argument that the State failed to prove he was more likely than not to commit another sexually violent act. Streeter focuses on the fact that none of the experts testified to any degree of certainty that he was more likely than not to engage in such an act. Dr. Richard McKee had not completed a risk assessment on Streeter, and could not opine to a degree of psychological certainty whether Streeter's mental disorder made him more likely than not to commit a future act. Dr. Robert Barahal testified that Streeter was "in a category that is close to, but not clearly beneath or above the legal threshold of 'more likely than not' that he will commit another sexually violent offense should he be discharged."⁶

¶12 The circuit court was well aware of the "more likely than not" standard it had to apply. It explained that it would consider the standard against the totality of the evidence: not just the various actuarial tools relied on by the experts, but also conduct reports, treatment notes, and other information in Streeter's file.

¶13 The circuit court noted that Streeter had scored high on a psychopathy test, showing he was "someone who is manipulative, shows a degree of, significant degree of callousness, pathological lying, irresponsible behavior, criminal background, poor anger management, sexual irresponsibility, and lack of conscience." The court commented on an incident inside the institution where Streeter put his hand on the breast of a female visitor, stating that although it appeared to be consensual, it was nevertheless cause for significant concern because "if someone under the level of scrutiny that Mr. Streeter was at the time

⁶ Dr. Hollida Wakefield also testified but, based on her representation that fifty percent of reported sexual assaults arose from false allegations, the circuit court found her incredible and disregarded her testimony.

can't follow the rules regarding sexual conduct, what happens when he's in a community without any level of scrutiny or rules[?]"

¶14 The circuit court was concerned about the fact that Streeter had managed to set up a prostitution ring from inside his institution. Aside from the self-evident problems, the court noted that running the ring required Streeter to keep secrets from his treatment professionals and other committed individuals in his group therapy sessions, which defeated the point of therapy as a tool to confront and address one's improper behaviors.

¶15 The circuit court further observed that Streeter had not been making progress in his treatment. Though he had been in a particular type of program, he was moved to a more intensive, four-phase program as a result of certain test scores. Completing phase three of the program would be considered progress. Streeter had made it to phase two before being returned to phase one due to his behavior. *Cf. State v. Pocan*, 2003 WI App 233, ¶13, 267 Wis. 2d 953, 671 N.W.2d 860 (progress in treatment one way to show petitioner is no longer sexually violent).

¶16 The circuit court observed that Barahal put Streeter "right on the cusp of this mythical, somewhat mythical fifty percent mark." It then observed that the actuarial tools—which helped put Streeter at this middle ground—were based on a likelihood of reconviction over a period of time, when in Wisconsin, the standard is whether a person is simply likely to reoffend. The court commented that reoffense is necessarily higher than reconviction, to account for unreported offenses and other reasons why a conviction might not result. The court also commented that the tools only forecast out fifteen years, when the Wisconsin standard looks at reoffense over a lifetime.

¶17 Based on the totality of this evidence—the expert who put Streeter on the “cusp” of the standard, extrapolation from the actuarial tools, and the evidence of Streeter’s behavior—we conclude that the circuit court reached a conclusion that any reasonable circuit court could have reached. That the evidence might support an alternate reasonable conclusion is not a sufficient basis for reversal. *See Brown*, 279 Wis. 2d 102, ¶40.

By the Court.—Order affirmed.

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

