

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

October 24, 1996

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

NOTICE

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

No. 95-1965-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DELMAR MCNEAL,

Defendant-Appellant.

APPEAL from an order of the circuit court for Rock County:
EDWIN C. DAHLBERG, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. Delmar McNeal appeals from an order denying his petition for conditional release from commitment under § 971.17, STATS. The issue is whether the trial court clearly erred by finding clear and convincing evidence that McNeal would pose a significant danger to himself or others if conditionally released. We conclude that the trial court did not clearly err, and therefore affirm.

In August 1993, McNeal committed an arson. In July 1994, on a stipulation that he was not guilty by reason of insanity (NGI), the court committed him to the custody of the Department of Health and Social Services for a thirteen-year, four-month term, which is the maximum permitted by law. Sections 939.50(3), 943.02(1) and 971.17(1), STATS. The court also found him in need of institutional care and ordered him placed at Mendota Mental Health Institution.

In February 1995, McNeal petitioned for conditional release. At the hearing on his petition, the court heard evidence that McNeal's paranoid schizophrenia was in remission due to medication and that he did not need hospitalization for treatment purposes. He had not experienced any problems since coming to Mendota and had been placed in minimum security since October 1994. In summary, the evidence showed that as long as McNeal continued to take his full medication dosages he posed no danger on release, but if he abandoned or reduced his medications he would pose a danger. The trial court concluded that the latter possibility was substantial enough to justify continued confinement for the time being. This appeal results from that decision.

One committed to a mental institution on an NGI finding may petition for conditional release from the institution after six months. Section 971.17(4), STATS. 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. Section 971.17(4)(d). In making that determination, the court may consider, among other things, the nature and circumstances of the crime, the person's mental history and present mental condition, and the conditions of release, including arrangements to ensure that the person will take the necessary medication. *Id.*

The evidence was sufficient to allow the trial court to deny release. McNeal had, on past occasions, abandoned his medication and subsequently committed criminal offenses. Although he had remained on medication and stabilized his condition since entering Mendota, the court could reasonably attribute that fact to the structured, controlled environment, and not necessarily McNeal's change of heart, although there was some evidence of an attitude change. Additionally, at the time of the hearing, McNeal was not yet eligible for

unescorted trips off the institution grounds. Given McNeal's history and the absence of any trial periods showing that McNeal would voluntarily continue to take his medications without supervision, the court could reasonably infer that a danger existed that McNeal might once again abandon his medications. If he did, it is undisputed that he would once again pose a risk of property damage and harm to others.

By the Court. – Order affirmed.

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