

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

April 2, 1997

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.

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

No. 96-3003-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

In re the Commitment of Rayfe J. Paulick:

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

RAYFE J. PAULICK,

Respondent-Appellant.

APPEAL from an order of the circuit court for Winnebago County:
WILLIAM E. CRANE, Judge. *Affirmed.*

Before Snyder, P.J., , Brown and Nettesheim, JJ.

PER CURIAM. Counsel for Rayfe J. Paulick has filed a no merit report pursuant to RULE 809.32, STATS. Paulick was advised of his right to respond to the no merit report and has elected not to respond. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no

arguable merit to any issue that could be raised on appeal. Therefore, we affirm the order committing Paulick to a secure mental health unit or facility as a sexually violent person.

The no merit report addresses five issues: (1) the constitutionality of ch. 980, STATS.; (2) the sufficiency of the evidence; (3) whether the trial court properly denied Paulick's request for a closed hearing; (4) whether the court erred by allowing testimony from nonexpert witnesses; and (5) whether the court erroneously exercised its discretion by committing Paulick to a secure facility despite alleged defects in the predisposition investigation. Our independent review of the record confirms counsel's analysis of these issues.

The constitutionality of ch. 980, STATS., was decided by the Wisconsin Supreme Court in *State v. Carpenter*, 197 Wis.2d 252, 271-72, 541 N.W.2d 105, 112-13 (1995), and *State v. Post*, 197 Wis.2d 279, 330-31, 541 N.W.2d 115, 133 (1995). This court has no authority to disregard those holdings. *State ex rel. McCaffrey v. Shanks*, 124 Wis.2d 216, 221, 369 N.W.2d 743, 747 (Ct. App. 1985).

The State presented sufficient evidence that Paulick was a sexually violent person. The test to be applied on appeal is whether the evidence was so lacking in probative value and force that it could be said as a matter of law that no trier of fact acting reasonably could have found that the State had proved the allegations in the petition beyond a reasonable doubt. *See* § 980.05(3)(a), STATS.; *State v. Gomez*, 179 Wis.2d 400, 404, 507 N.W.2d 378, 380 (Ct. App. 1993). Here, the jury had the right to accept the testimony of the State's expert witnesses and find that Paulick suffered from a mental disorder that predisposed him to engage in sexual violence and that he was dangerous to others because this disorder created a substantial probability that he would engage in acts of sexual violence. *See* WIS J I—CRIMINAL 2502.

Paulick was convicted in 1989 of having sexual contact with children. When he was paroled in June 1992, he was instructed to have no contact with persons under the age of eighteen. In April 1993, he contacted the victim from the original offense and was taken into custody, but was given an alternative to revocation. Soon thereafter, he again had contact with minors and his parole was revoked.

A psychiatrist supervisor at the prison testified that Paulick attended sixty-seven group therapy sessions, but his level of participation was fair to minimal and his participation was not highly productive. He did not develop victim empathy. The psychiatrist supervisor testified that Paulick was at high risk for reoffending.

A Department of Corrections psychologist diagnosed Paulick as having pedophilia and stated his belief that Paulick was at high risk to engage in acts of sexual violence. The psychologist noted added risk factors, such as the victims not being family members, Paulick's deviant arousal, denial of serious treatment needs and Paulick's own victimization as a child. Another psychologist confirmed the diagnosis of pedophilia and the substantial risk that Paulick would commit future violent sexual acts. This diagnosis was based upon a review of thirty-one risk factors associated with recidivism. Paulick had twenty-four of the thirty-one risk factors. This evidence, along with Paulick's behavior while released on supervision, is sufficient to support the verdict.

The trial court properly denied Paulick's request for a closed hearing. Paulick argued that the rules from ch. 51, STATS., 1993-94, should apply to proceedings under ch. 980, STATS. Court proceedings are generally open to the public unless otherwise provided by law. *See* § 757.14, STATS. There is a presumption that court proceedings will be held in public and the reasons for closing them to the public must be substantial. *See State ex rel. LaCrosse Tribune v. Circuit Court*, 115 Wis.2d 220, 235, 340 N.W.2d 460, 467 (1983). Paulick presented no compelling reason for closing the

proceedings to the public. In addition, the record discloses no prejudice resulting from the public hearing.

The trial court properly allowed nonexpert testimony. At trial, Paulick moved to exclude the testimony of lay witnesses on the ground that it would be redundant to the testimony of the experts. The other witnesses, counselors and individuals with knowledge of Paulick's circumstances when his parole was granted and then revoked, presented relevant, noncumulative testimony. The trial court determined that the witnesses' direct observations of Paulick would be helpful to the jury even if they were somewhat repetitious. There is no arguable merit to the contention that the trial court improperly exercised its discretion by allowing this testimony. See *State v. Ross*, 203 N.W.2d 66, 80, 552 N.W.2d 428, 433 (Ct. App. 1996).

The court properly exercised its discretion when it ordered that Paulick be committed to a secure facility. At the dispositional hearing, Paulick argued that the report filed by Dr. Ronald Sindberg did not comply with the procedures set forth in §§ 972.15 or 971.17(2)(b) through (f), STATS. Neither of those procedures mandates that the subject of the investigation be granted an interview of any specific length. A brief interview by a trained professional looking for any recent change in circumstances is sufficient. In making its placement determination, the trial court concluded that no community placement options were appropriate for Paulick's current treatment status. The testimony of the expert witnesses supports this finding. The reasons given by the trial court for placement in a secure facility show a reasonable exercise of the trial court's discretion.

Our independent review of the record discloses no other potential issues for appeal. Therefore, we relieve Attorney Leonard Kachinsky of further representing

Paulick in this matter and affirm the order for placement in a secure mental health facility.

By the Court.—Order affirmed.

