COURT OF APPEALS
DECISION
DATED AND FILED

August 13, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1993 **Cir. Ct. No. 1998CI3**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

IN RE THE COMMITMENT OF ISAAC WILLIAMS:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

ISAAC WILLIAMS,

RESPONDENT-APPELLANT.

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

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

¶1 PER CURIAM. Isaac Williams appeals an order denying his petition for discharge from his Chapter 980 commitment. He argues: (1) that the circuit court should have granted his petition for discharge because it found that he

did not meet the criteria for continued commitment; and (2) that the circuit court used the wrong standard of proof when it made its decision. We affirm.

¶2 Williams was committed under Chapter 980 as a sexually violent person in 2000. In 2010, he petitioned for discharge from commitment. At the discharge hearing, the State called Dr. Christopher Synder, who testified that Williams suffers from anti-social personality disorder, which makes it more likely than not that he will engage in future acts of sexual violence. The State also called Dr. Stephen Kopetskie, who testified about Williams's progress at Sand Ridge Treatment Facility. Kopetskie testified that Williams had made steady improvement, but had not completed treatment. Kopetskie also testified that Williams no longer has sexually deviant interests. Williams called three psychologists on his behalf, Dr. Patricia Coffey, Dr. Sheila Fields, and Dr. Charles Lodl, all of whom agreed with the State's psychologist, Dr. Snyder, that Williams has anti-social personality disorder. However, they all concluded that Williams is *not* more likely than not to commit future acts of sexual violence.

¶3 After hearing the testimony, the circuit court issued a somewhat confusing oral decision, denying Williams's petition for discharge. As pertains to this appeal, the circuit court stated:

> The Court looks at the statutory requirements under [Chapter] 980 obviously, and addresses those, and *the court at this point just doesn't believe that he's met all the criteria that ha[ve] been mentioned on the record*.
>
> The Court does in fact believe based upon what has been represented and testified to, that it is over 50 percent.
>
> While considering the criteria for discharge under [Chapter] 980 … the Court believes *to a reasonable degree of psychological certainty* that Mr. Williams's degree of risk is in a category that exceeds the legal threshold of more likely than not, that he will commit another sexually

> violent offence should he be discharged. So the court is going to deny the request for discharge. (Emphasis added).

¶4 Williams first contends that the circuit court should have granted his petition for discharge because it found that he did not meet the criteria for commitment. Williams points to the circuit court's statement: "[T]he court at this point just doesn't believe that he's met all the criteria." Looking at the circuit court's oral decision in its entirety, however, it is clear that the circuit court did not mean that Williams had not met the criteria for commitment. It meant that he had not met the criteria for *discharge*. Williams acknowledges as much in his appellant's brief, stating "under the totality of the court's bench decision, one eventually reaches the understanding that the judge is of the opinion that Williams is still a sexually violent person." The circuit court's unfortunate phrasing incorrectly suggests that Williams carries the burden of proof rather than the State, but is not grounds for relief because the circuit court's decision as a whole shows that the circuit court denied the petition for discharge because it concluded that Williams continues to suffer from a mental illness that makes it more likely than not that he will commit acts of sexual violence in the future.

¶5 Williams next argues that the circuit court applied the wrong burden of proof when ruling on his petition. At a discharge hearing, the State must prove that the committed person continues to meet the criteria for commitment by clear and convincing evidence. WIS. STAT. § 980.09(3). With regard to the burden of proof, the circuit court stated: "The court believes *to a reasonable degree of psychological certainty* that Mr. Williams's degree of risk is in a category that exceeds the legal threshold of more likely than not, that he will commit another sexually violent offence should he be discharged." (Emphasis added).

¶6 The State acknowledges that "a reasonable degree of psychological certainty" is not the correct burden of proof, but contends that this was simply a misstatement by the circuit court. Regardless of whether the circuit court's comment was a misstatement or it applied the incorrect standard at that particular point in its decision, we conclude that any error by the circuit court is harmless. An error is harmless if there is no reasonable possibility that the error changed the outcome of the action. ***Evelyn C.R. v. Tykila S.***, 2001 WI 110, ¶28, 246 Wis. 2d 1, 629 N.W.2d 768. There is no reasonable possibility that the outcome would have been different because the circuit court used the correct clear-and-convincing-evidence standard overall in making its decision.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).