

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 5, 2013

Diane M. Fremgen
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. 2012AP2825

Cir. Ct. No. 2002C11

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE COMMITMENT OF MICHAEL D. WILLIAMS:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

MICHAEL D. WILLIAMS,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Oconto County:
PETER C. DILTZ, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Michael Williams, pro se, appeals an order denying a petition for discharge from his WIS. STAT. Ch. 980 commitment.¹ Williams challenges the sufficiency of the evidence to deny his discharge petition. Specifically, Williams claims the circuit court erred by denying the petition based on “historical evidence.” We reject Williams’ arguments and affirm the order.

BACKGROUND

¶2 In 2004, a jury found Williams was a sexually violent person within the meaning of WIS. STAT. Ch. 980, and the circuit court ordered him committed to the Department of Health and Family Services. The predicate sexually violent offense was Williams’ 1993 conviction for one count of sexual contact with a person under the age of sixteen years.

¶3 In March 2012, Williams petitioned for discharge and subsequently represented himself at a discharge trial to the court. After subsequent briefing, the court denied the petition. This appeal follows.

DISCUSSION

¶4 A person committed under WIS. STAT. Ch. 980 may petition for discharge at any time. WIS. STAT. § 980.09(1). If, as here, the circuit court determines 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. WIS. STAT. § 980.09(2). At the hearing, the State “has the burden of proving by clear and convincing

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

evidence that the person meets the criteria for commitment as a sexually violent person.” WIS. STAT. § 980.09(3).

¶5 The State had to prove that Williams: (1) has been convicted of a sexually violent offense; (2) currently has a mental disorder; and (3) 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. STAT. § 980.01(7); *see also* WIS JI—CRIMINAL 2506 (2012). 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 In reviewing the sufficiency of the evidence in a WIS. STAT. Ch. 980 proceeding, we defer to the circuit court’s assessment of the credibility of witnesses and its evaluation of the evidence. *State v. Brown*, 2005 WI 29, ¶44, 279 Wis. 2d 102, 693 N.W.2d 715. We will not set aside the court’s denial of a discharge petition unless the evidence, viewed most favorably to the State and the commitment, was so lacking in probative value that no reasonable trier of fact could have found that the burden of proof was satisfied. *State v. Kienitz*, 227 Wis. 2d 423, 434, 597 N.W.2d 712 (1999) (citations omitted).

¶7 Here, Williams does not dispute that the State met its burden of proving the first element—that Williams was convicted of a sexually violent offense. Williams, however, claims there is insufficient evidence to establish that he *currently* suffers from a qualifying mental disorder. Williams asserts that the expert opinions regarding his mental health exhibit “confirmation bias” because they are based solely on his “past acts of sexual and non sexual history.” Williams defines “confirmation bias” as the selection and interpretation of evidence to

support a previously held hypothesis or belief. However, he fails to adequately develop his “confirmation bias” theory, citing no cases supporting the proposition. We need not consider arguments that are undeveloped or unsupported by reference to relevant legal authority. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶8 In any event, the evidence was sufficient for the jury to find the State met its burden of proof. Two experts testified that Williams currently suffers from a mental disorder. Doctor Christopher Tyre testified that Williams has two mental disorders—paraphilia, not otherwise specified (NOS), and antisocial personality disorder with “borderline features.” With respect to the paraphilia NOS diagnosis, Tyre opined that Williams is prone to “intense recurrent sexual urges, sexual fantasies or behaviors that generally involve ... nonhuman objects, harm or humiliation to oneself or one’s partner, or children or other non-consenting persons.” While Williams’ criminal history was relevant to this determination, Tyre opined that Williams still suffered from paraphilia NOS, noting:

It’s the nature of ... human sexuality. Our sexuality does not change much over time. And so if part of a person’s sexual attraction or sexual makeup also includes an attraction to prepubescent partners, that’s understood to be a life course. Now, it may wane and wax at times, but it’s always going to be part of Mr. Williams’ sexual makeup.

¶9 Regarding the antisocial personality disorder diagnosis, Tyre testified that Williams exhibited several diagnostic criteria, including a “failure to conform with social norms with respect to lawful behavior,” deceitfulness, impulsivity and a failure to meet obligations. Tyre based his diagnosis, in part, upon Williams’ continued willingness to violate the rules and rights of others while on supervision and despite being sanctioned. Tyre added that “by definition personality disorders are enduring and stable characteristics.”

¶10 Tyre ultimately opined that Williams’ current mental disorders affect his emotional or volitional capacity. Based on his evaluation of Williams and application of actuarial models used to predict Williams’ recidivism risk, Tyre opined that Williams’ mental disorders made him more likely than not to engage in future acts of sexual violence.

¶11 Doctor William Schmitt likewise testified that Williams suffers from paraphilia NOS and antisocial personality disorder. Schmitt noted that he had come up with “very similar scores” on the actuarial models utilized by Tyre and added that Williams possesses a number of “dynamic risk factors,” including the fact that Williams had not participated in any treatment for the preceding five and one-half years. Because Williams refused to participate in treatment, Schmitt noted “there’s really been no change for him over time, and ... this condition would continue to exist and would again predispose him to engaging in particular behavior in the future.” Schmitt nevertheless opined that Williams presented a “mixed profile” of risk, placing him at “someplace around 50 percent risk.” Although Schmitt testified it was a “close call,” he could not say Williams’ mental disorders made him more likely than not to engage in future acts of sexual violence.

¶12 Although the experts did not agree on their ultimate conclusions, the fact-finder at a WIS. STAT. Ch. 980 trial may accept or reject an expert’s opinion and accept or reject certain portions while disregarding others. *Kienitz*, 227 Wis. 2d at 438-41. Additionally, the court was free to weigh whether Williams’ lack of progress in treatment contributed to his risk of re-offense, regardless of the actuarial test scores. *Cf. State v. Pocan*, 2003 WI App 233, ¶12, 267 Wis. 2d 953, 671 N.W.2d 680 (progress in treatment is one way to show petitioner is no longer sexually violent). There was no evidence of discernible change in Williams.

Despite Williams' concerns about any historical bias, recent overt acts that are sexually motivated are not a required element of proof when an offender has been continuously confined. *See State v. Bush*, 2005 WI 103, ¶¶34, 38-39, 283 Wis. 2d 90, 699 N.W.2d 80. Because there was sufficient evidence to prove that Williams meets the criteria for continued commitment as a sexually violent person, the circuit court properly denied the discharge petition.

By the Court.—Order affirmed.

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

