COURT OF APPEALS
DECISION
DATED AND FILED

July 29, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP1552 **Cir. Ct. No. 1996CF962979**

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

IN RE THE COMMITMENT OF STANLEY E. MARTIN, JR.

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

STANLEY EDWARD MARTIN, JR.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: CHARLES F. KAHN, JR., Judge. *Affirmed.*

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

¶1 PER CURIAM. Stanley Edward Martin, Jr., *pro se*, appeals an order denying his petition for discharge under WIS. STAT. ch. 980 (2011-12).[1] He argues: (1) that the circuit court erroneously stated that the trial judge who decided his 2010 petition for discharge had considered and reviewed the entire file before denying the 2010 discharge petition; (2) that his discharge petition should have been governed by the federal "reliability standard" for expert testimony set forth in ***Daubert v. Merrell Dow Pharmaceuticals, Inc.***, 509 U.S. 579 (1993); (3) that an argument the State made in its trial brief constitutes "newly discovered evidence"; and (4) that the circuit court erred in denying his challenge to ***State v. Allison***, 2010 WI App 103, 329 Wis. 2d 129, 789 N.W.2d 120. We affirm.

¶2 Martin first argues that the circuit court erroneously stated that the trial judge who decided his 2010 petition for discharge had considered and reviewed the entire file before denying the discharge petition. The State concedes that the circuit court's statement was factually incorrect. Even so, Martin is not entitled to relief. As noted by the State, the circuit court reviewing the current discharge petition conducted a thorough paper review of the petition and attachments as required by WIS. STAT. § 980.09(1). *See* ***State v. Richard***, 2011 WI App 66, ¶11, 333 Wis. 2d 708, 799 N.W.2d 509. The circuit court then independently concluded that the petition did not allege facts from which it could conclude that Martin's condition had changed since the date of his initial commitment order so that he no longer met the criteria for commitment as a sexually violent person. *See* ***id.*** Because the circuit court followed the correct

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

process in evaluating Martin's current petition, the circuit court's misstatement about the prior petition is not grounds for relief.

¶3 Martin next argues that his discharge petition should have been governed by the federal "reliability standard" for expert testimony set forth in ***Daubert***, 509 U.S. 579, which the Wisconsin legislature adopted by the 2011 amendment to WIS. STAT. § 907.02(1). *See* 2011 Wis. Act 2, § 34m. We recently concluded that the revisions to § 907.02(1) do not apply to discharge petitions in ch. 980 cases unless the original commitment was commenced after the effective date of the new rule. *See* ***State v. Alger***, 2013 WI App 148, ¶1, 352 Wis. 2d 145, 841 N.W.2d 329. Martin's original commitment was before the effective date of the new rule. Therefore, Martin's discharge petition is not governed by the ***Daubert*** "reliability standard" for expert testimony codified in the amendment to § 907.02(1).

¶4 Martin next argues that a statement the State made in its trial brief about the reliability of actuarial instruments is "newly discovered evidence." In its trial brief, the State explained that empirically based scales, also known as actuarial instruments, have been developed and refined in the last decade. The State then argued that reoffending predications based on those scales are now about forty percent "better than chance." Martin contends he is entitled to relief based on this new scholarship. We disagree. Changes in the scholarship underlying actuarial instruments do not support a petition for discharge unless a petitioner shows that *he is less likely to reoffend* based on actuarial tools that have been revised in response to the changes in scholarship. *See* ***Richard***, 333 Wis. 2d 708, ¶13. Martin has not shown that he is less likely to reoffend, so he is not entitled to relief.

¶5 Finally, Martin argues that the circuit court erred in denying his challenge to the court of appeals ruling in ***State v. Allison***, 2010 WI App 103, 329 Wis. 2d 129, 789 N.W.2d 120. This argument is inadequately developed. Martin contends that our decision in ***Allison*** is incorrect, but does not explain in any coherent manner why it was incorrect or how it applies to his appeal. Therefore, we will not consider this argument further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (we will decline to review issues which are inadequately briefed).

By the Court.—Order affirmed.

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