COURT OF APPEALS
DECISION
DATED AND FILED

December 27, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP2367-CR **Cir. Ct. No. 2004CF124**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GRAHAM L. STOWE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Brown County: KENDALL M. KELLEY, Judge. *Affirmed*.

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Graham Stowe appeals an order denying his petition for conditional release under WIS. STAT. § 971.17(4) (2015-16).[1] Stowe contends the State failed to prove by clear and convincing evidence that, if conditionally released, he would pose a significant risk of bodily harm to himself or others or a significant risk of property damage. *See* § 971.17(4)(d). Stowe also argues § 971.14(4)(d) is unconstitutional both as applied to him and on its face. We reject Stowe's arguments and affirm.

BACKGROUND

¶2 A criminal complaint alleged that, in the early morning hours of February 9, 2004, Stowe entered his ex-girlfriend's residence and forced her and their two-year-old daughter out of bed at gunpoint. Stowe subsequently tied up and handcuffed his ex-girlfriend, her minor brother, and her father. He beat her father with a baton and doused him with gasoline. Stowe repeatedly stated he was going to take his ex-girlfriend somewhere and force her to watch him commit suicide. He also threatened to kill her father and sister. Stowe's ex-girlfriend was ultimately able to call 911, and she later escaped with her daughter after police arrived at the residence. While police remained outside the residence, Stowe took some pills—after again indicating he wanted to kill himself—and then passed out. His ex-girlfriend's father and brother were then able to escape.

¶3 Stowe was charged with eleven counts as a result of these events. He entered pleas of not guilty by reason of mental disease or defect (NGI) to each of the charges against him. Stowe subsequently entered no contest pleas to

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

first-degree recklessly endangering safety, intimidation of a victim, felony bail jumping, and three counts of false imprisonment. The circuit court found Stowe NGI with respect to those offenses, and the remaining charges were dismissed. The court ordered Stowe committed to the Department of Health and Family Services for institutional care for thirty-nine years and six months.

¶4 In April 2007, the circuit court entered an order conditionally releasing Stowe. However, in June 2009, the Department of Health Services (DHS) petitioned to revoke Stowe's conditional release. The petition alleged Stowe had violated his rules of conditional release by entering a bar where his ex-girlfriend worked, and an attached report indicated he had repeatedly violated his rules on other occasions, despite numerous warnings. The circuit court revoked Stowe's conditional release in July 2009.

¶5 Stowe petitioned for conditional release three more times between 2010 and 2012. The circuit court denied each of Stowe's petitions, and we affirmed those decisions on appeal. *See* ***State v. Stowe***, No. 2012AP2644-CR, unpublished slip op. (WI App July 30, 2013); ***State v. Stowe***, No. 2011AP2920-CR, unpublished slip op. (WI App Oct. 10, 2012); ***State v. Stowe***, No. 2010AP2458-CR, unpublished slip op. (WI App June 7, 2011).

¶6 In July 2013, Stowe escaped from a minimum security unit at Mendota Mental Health Institute. The record indicates Stowe "impulsively took off from [Mendota] when he thought that security guards were going to place him in a more secure unit." He evaded capture for over three months. He was subsequently convicted of escape and sentenced to prison. After serving the initial confinement portion of his sentence, Stowe was returned to Mendota to serve the

extended supervision portion of his sentence while serving his commitment and was placed in a maximum security unit.

¶7 In February 2016, Stowe filed the petition for conditional release that is at issue in this appeal. Two court-appointed psychologists—Dr. William Merrick and Dr. Kevin Miller—evaluated Stowe, submitted reports to the circuit court, and testified at Stowe's conditional release hearing. Stowe's treatment team at Mendota submitted a letter to the court, and Dr. Elliot Lee, a staff psychiatrist at Mendota, testified at the hearing. Stowe's wife, Nicole Zich, also testified at the hearing, and Stowe read a statement in support of his conditional release.

¶8 At the close of the conditional release hearing, the circuit court found the State had met its burden to prove, by clear and convincing evidence, that Stowe would pose a significant risk of bodily harm to himself or others if he were conditionally released. The court began by describing Stowe's statement in support of conditional release as "consistently disturbing." The court explained, "[I]t demonstrated what the Court was already aware of, … that [Stowe] is very bright, intelligent, capable and articulate, but there is such a distorted self-serving view and presumption of being a victim that permeates all of it, that that is a concern." The court stated Stowe's perceptions regarding his own situation did not "seem to square in any sense with what has occurred, and that ability to distort reality for his own purposes is, in fact, something that increases the Court's perception of risk."

¶9 Turning to the expert witnesses' testimony, the circuit court noted Dr. Merrick had testified "that it was his opinion [Stowe] was dangerous to himself or others to a reasonable degree of certainty within his profession." The court also cited Dr. Lee's testimony regarding Stowe's refusal to engage in

treatment. The court further relied on Dr. Miller's testimony that Stowe's current mindset "is consistently one of hopelessness" and that, if Stowe were released, that hopelessness could "become[] more manifest," suggesting "a much higher risk as a consequence."

¶10 The circuit court next cited Stowe's "long history" of antisocial behavior, as well as his "more recent conduct," including his escape from a lower-security unit at Mendota. The court emphasized that Stowe "was not following the law" and was in possession of marijuana during his period of escape. The court described the escape as "clearly impulsive" and stated it was "consistent with the very kind of conduct that started out in this case in the first place." While the court stated Stowe's original offenses were "not the Court's focus so much here today," the court emphasized that Stowe's more recent conduct was "not inconsistent with the original offense."

¶11 Consistent with its oral ruling, the circuit court entered a written order denying Stowe's petition for conditional release. Stowe now appeals.

DISCUSSION

I. Sufficiency of the evidence

¶12 A person who has been committed to DHS custody after being adjudicated NGI of a crime may petition the committing court for conditional release under WIS. STAT. § 971.17(4). The court must 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." Sec. 971.17(4)(d). In determining whether a person meets this standard, a court may, but is not required to, consider the following

non-exhaustive list of factors: (1) the nature and circumstances of the crime; (2) the person's mental history and present mental condition; (3) where the person will live; (4) how the person will support himself or herself; (5) what arrangements are available to ensure that the person has access to and will take necessary medication; and (6) what arrangements are possible for treatment beyond medication. ***Id.***; *see also* ***State v. Randall***, 2011 WI App 102, ¶16, 336 Wis. 2d 399, 802 N.W.2d 194 (***Randall III***). Ultimately, the State bears the burden to prove, by clear and convincing evidence, that the petitioner meets the dangerousness standard set forth in § 971.17(4)(d). ***Randall III***, 336 Wis. 2d 399, ¶15.

¶13 We review the circuit court's conditional release determination using the deferential "sufficiency of the evidence" standard. ***Id.***, ¶13. In applying this standard, we review the record to determine whether credible evidence exists to support the circuit court's finding of continued dangerousness. ***Id.***, ¶17. Stated differently, we ask whether the circuit court could "reasonably be convinced by evidence it ha[d] a right to believe and accept as true." ***Id.***, ¶13 (quoting ***State v. Wilinski***, 2008 WI App 170, ¶12, 314 Wis. 2d 643, 762 N.W.2d 399). "If so, we affirm, despite the fact that there may be evidence and inferences to the contrary."

Id., ¶17. Moreover, "we give deference to the [circuit] court's determination of credibility and evaluation of the evidence and draw on its reasoning." ***Id.***, ¶14.[2]

¶14 Here, credible evidence supports the circuit court's determination that the State met its burden to prove Stowe would pose a significant risk of bodily harm to himself or others if conditionally released. A number of factors—both statutory and otherwise—support the court's finding of continued dangerousness.

¶15 First, the nature and circumstances of Stowe's index offenses as described above support the circuit court's determination. *See* WIS. STAT. § 971.17(4)(d). During the hearing on Stowe's petition for conditional release, Dr. Miller accurately described Stowe's actions that night as "horrific." The conduct underlying Stowe's index offenses indisputably put both Stowe and others at significant risk of bodily harm.

¶16 Evidence regarding Stowe's mental history and current mental condition further supports the circuit court's determination regarding Stowe's risk of dangerousness if conditionally released. *See* ***id.*** Stowe was previously diagnosed with "Major Depressive Disorder with Psychotic Features." At the time he committed his index offenses, he was experiencing "auditory hallucinations that were giving him the message to kill himself." Doctor Merrick reported Stowe

[2] Citing ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 407 N.W.2d 281 (Ct. App. 1987), Stowe argues we should apply a bifurcated standard of review, upholding the circuit court's factual findings unless they are clearly erroneous, but independently reviewing "whether the facts meet the legal standard for a mental commitment." However, ***K.N.K.*** was an appeal from a circuit court's order for protective placement under WIS. STAT. ch. 55. *See* ***K.N.K.***, 139 Wis. 2d at 197. In ***State v. Randall***, 2011 WI App 102, ¶¶11-17, 336 Wis. 2d 399, 802 N.W.2d 194 (***Randall III***), we expressly held that the deferential "sufficiency of the evidence" standard applies when a defendant challenges the sufficiency of the evidence supporting a circuit court's decision to deny a petition for conditional release from an NGI commitment.

has "not shown evidence of any mood disorder or psychotic symptoms (hallucinations, delusions, formal thought disorder) for many years, and has not required psychiatric medications to manage symptoms of any mental illness in over ten years." Nonetheless, both Dr. Merrick and Dr. Lee opined that Stowe currently meets the diagnostic criteria for "Other Specific Personality Disorder, with Narcissistic and Antisocial Features."

¶17 The circuit court could reasonably infer that this diagnosis supported a finding of continued dangerousness under WIS. STAT. § 971.17(4)(d). Doctor Miller testified Stowe's narcissism creates a risk of him "doing something impulsive," citing Stowe's prior escape from Mendota as an example. Doctor Miller also indicated that antisocial personality characteristics "are associated with higher risk of violence when compared with typical or average individuals." While Dr. Miller testified antisocial behaviors tend to decrease when a person reaches age forty, Dr. Merrick testified that narcissism, Stowe's "prominent … maladaptive personality trait, does not show the same age-related decline."

¶18 Doctor Merrick also diagnosed Stowe with "Alcohol and Cannabis Use Disorders, both In Sustained Remission, In a Controlled Environment." Doctor Miller observed that Stowe "was using cocaine and methamphetamine in the week prior to" his index offenses. Doctor Miller opined that Stowe's drug use contributed to his index offenses and that Stowe "is a risk of future harm" when "using illicit substances such as cocaine and methamphetamines." He further noted that Stowe used cannabis while in the community following his 2013 escape from Mendota, and that Stowe has "demonstrated across time and situation that he is not able to refrain from substance use." Doctor Miller asserted, "[S]hould [Stowe] resume illicit substance use on conditional release[,] he may be more prone to future violent acts." Based on this evidence, the circuit court could

reasonably infer that, if conditionally released, there was a significant risk Stowe would resume the type of drug use that contributed to his index offenses, thus putting both Stowe and others at risk of bodily harm.

¶19 The circuit court could also reasonably rely on Dr. Merrick's and Dr. Miller's testimony that Stowe's current mental state is one of hopelessness, which poses a risk of danger to both Stowe and others. Doctor Miller testified Stowe "appears to be fairly hopeless at this point" because he "doesn't believe he's going to get a fair shake from Mendota or the Court." Doctor Miller further explained in his report:

> Mr. Stowe has formed the belief that the Court will not treat him objectively. Mr. Stowe is convinced that he will spend all of his remaining commitment, until the year 2043 at age 60, in a state facility because he doesn't believe the Court will ever grant him conditional release again. Mr. Stowe currently maintains a belief that he would have more freedom, and more opportunity to interact with others in a meaningful manner[,] if he returned to a prison facility like Green Bay Correctional Institution. He claims a member of the Department of Community Corrections let him know that the "only" way he, Mr. Stowe, would get revoked from probation and returned to a DOC facility is if he "caught a case."

¶20 Doctor Miller went on to state that, if Stowe were granted conditional release, it was "highly likely" he would either violate or be accused of violating his rules of conditional release and would therefore be subject to revocation. Doctor Miller opined that, under those circumstances, Stowe's hopelessness would create an "elevated risk of impulsive or aggressive behavior," including violence, because Stowe would rather "catch a case" and go to prison than return to Mendota. Doctor Miller also stated Stowe's hopelessness put him at risk of suicide. He likened Stowe's current mental state to his mindset at the time of his index offenses, when Stowe "felt he had nothing left to lose by killing

himself and making others watch." Doctor Merrick similarly opined that Stowe's current mindset is characterized by hopelessness, which is associated with a risk of suicide.

¶21 Evidence regarding Stowe's postcommitment conduct also supports the circuit court's determination that Stowe would pose a significant risk of bodily harm to himself or others if conditionally released. As noted above, Stowe was revoked from conditional release in 2009 after repeatedly violating his rules of supervision, including by entering a bar where his ex-girlfriend worked. Stowe later escaped from Mendota after forming a belief that he was going to be transferred to a higher security unit. While in the community following his escape, Stowe engaged in illegal conduct by using marijuana.

¶22 These actions demonstrate that, during the years since his commitment, Stowe has consistently been either unwilling or unable to adhere to rules imposed on him. Notably, Dr. Merrick assessed Stowe's risk of future violence using the HCR-20, a "structured clinical method of assessing risk of a person to engage in act of actual, attempted, or threatened harm to another person." Doctor Merrick determined that, under the HCR-20, Stowe's risk of future non-sexual violence in the next six to twelve months was in the "medium" range. Doctor Merrick observed the most significant risk management factor under the HCR-20 was Stowe's failure to comply with rules.

¶23 The record also indicates that, after Stowe was returned to Mendota following his escape, he was placed in a maximum security unit. Stowe's treatment team explained Stowe is housed in that unit "because public safety would be jeopardized in the event of an escape from a less secure environment." This assessment further supports the circuit court's determination that

conditionally releasing Stowe would pose a significant risk of danger to either Stowe or the public.

¶24 In addition, Stowe's treatment team explained that when Stowe was returned to Mendota in 2015, he initiated a hunger strike in order to protest his placement there. Stowe continued his hunger strike, despite being informed that doing so could have negative effects on his health. Even after Dr. Lee explained to Stowe that staff needed to draw his blood to check his condition because he was at risk of kidney failure, Stowe refused to consent to a blood draw and actively resisted subsequent efforts to forcibly draw his blood. This evidence indicates Stowe is willing to engage in conduct he knows is deleterious to his physical health, which supports an inference that he would pose a danger to himself if conditionally released.

¶25 Evidence regarding Stowe's treatment needs also supports the circuit court's dangerousness determination. *See* WIS. STAT. § 971.17(4)(d). Although the record shows Stowe has little or no need for medication, Dr. Merrick testified personality disorder with narcissistic and antisocial features is "one of the more difficult psychological conditions to treat," and treatment typically involves "fairly intensive individual psychotherapy" at least once a week "over the course of years." Doctor Merrick specifically opined that, given the narcissistic features of Stowe's personality disorder, it will "take some time for him to realize that he is not the center of the universe, [and] that other people matter." Based on Dr. Merrick's testimony, the circuit court could reasonably conclude Stowe's treatment needs are substantial.

¶26 Moreover, evidence was introduced at the conditional release hearing indicating that Stowe has refused to engage in treatment since returning to

Mendota. Stowe's treatment team, for instance, noted he has been "minimally involved with treatment on the unit and frequently refuses to meet with the clinical team."[3] Based on this evidence, the circuit court could reasonably infer that Stowe's personality disorder, which predisposes him to violent and impulsive behavior, has not yet been controlled through treatment. The court could also reasonably question whether Stowe would avail himself of treatment opportunities if conditionally released, given his failure to participate in treatment while institutionalized.

¶27 The evidence summarized above is more than sufficient to support the circuit court's determination that the State proved, by clear and convincing evidence, that Stowe would pose a significant risk of bodily harm to himself or others if conditionally released. None of Stowe's arguments to the contrary are persuasive. For instance, Stowe asserts that "neither doctor appointed to evaluate [him] opined that he posed a significant risk of harm to himself or others … if conditionally released." Stowe contends Dr. Merrick merely opined that Stowe "may" pose a significant risk if released, while Dr. Miller declined to offer an opinion one way or the other.

¶28 This argument fails for two reasons. First, while Dr. Merrick's report stated Stowe "may" pose a significant risk of harm to himself or others if released, the following exchange occurred during Stowe's conditional release hearing:

[3] Although both Dr. Merrick and Dr. Miller questioned whether Stowe's treatment plan at Mendota is appropriate for a person with his diagnosis, the record amply demonstrates that Stowe has been unwilling to engage in treatment, regardless of professional disputes about the appropriateness of a specific treatment program.

> [THE STATE]: … With the defendant's attitude at this point in time, past behavior, the testings that you've cited, *do you see him posing at this point in time, without further treatment, … a significant risk of harm to himself or others if he were conditionally released?*
>
> [DOCTOR MERRICK]: *From the maximum security unit, yes.*

(Emphasis added.) Thus, despite using the word "may" in his report, Dr. Merrick testified unequivocally at the conditional release hearing that Stowe would pose a significant risk of harm to himself or others if conditionally released.

¶29 Second, Stowe cites no authority in support of the proposition that a court may not conclude a person meets the dangerousness standard set forth in WIS. STAT. § 971.17(4)(d) without an explicit expert opinion to that effect. Nothing in the text of the statute suggests that is the case. We have previously recognized that expert testimony is not required to support a finding of future dangerousness in commitment proceedings under WIS. STAT. ch. 980. *See* ***State v. Mark***, 2008 WI App 44, ¶51, 308 Wis. 2d 191, 747 N.W.2d 727. Moreover, it is well established that a circuit court, when acting as factfinder, may accept certain portions of an expert's testimony while disregarding others. *See* ***State v. Owen***, 202 Wis. 2d 620, 634, 551 N.W.2d 50 (Ct. App. 1996). Accordingly, the circuit court in this case could accept various portions of the experts' testimony supporting a determination that Stowe meets the dangerousness standard in § 971.17(4)(d), without relying on the experts' ultimate opinions on that issue.

¶30 Stowe next notes that his wife, Nicole Zich, testified Stowe could live with her if conditionally released and had been offered a job in construction. Stowe argues these factors weigh in favor of conditional release. *See* WIS. STAT. § 971.17(4)(d). However, when reviewing a circuit court's decision on a petition for conditional release, we must affirm as long as credible evidence supports the

court's decision, even if other evidence supports a contrary conclusion. ***Randall III***, 336 Wis. 2d 399, ¶17. Here, as summarized above, there is ample credible evidence to support the circuit court's decision to deny Stowe's petition.

¶31 Finally, Stowe asserts that conditional release is "highly structured." He apparently intends to argue that the "structured" nature of conditional release will minimize or eliminate any risk he may pose to himself or others. However, this argument ignores Stowe's past violations of his rules of conditional release. It also disregards his escape from a minimum security unit at Mendota. In addition, it ignores Dr. Merrick's opinion that Stowe's history of failing to follow rules is a significant factor supporting a determination that he would pose a risk of bodily harm to himself or others if conditionally released. On this record, the circuit court did not err by denying Stowe's petition, despite the "structured" nature of conditional release.

II. As-applied challenge to WIS. STAT. § 971.17(4)(d)

¶32 Stowe next argues WIS. STAT. § 971.17(4)(d) is unconstitutional as applied to him. Stowe's argument is based on ***State v. Randall***, 192 Wis. 2d 800, 532 N.W.2d 94 (1995) (***Randall I***). There, our supreme court considered whether a statutory scheme that "allows the state to confine an insanity acquittee who is no longer mentally ill, solely on the grounds that the individual is a danger to himself, herself or others, violate[s] the Due Process Clause of the United States Constitution." ***Id.*** at 806 (footnote omitted). The court concluded it is not a denial of due process "for an insanity acquittee who has committed a criminal act to be confined in a state mental health facility for so long as he or she is considered dangerous, provided that the commitment does not exceed the maximum term of imprisonment which could have been imposed." ***Id.*** at 806-07. The court stated

this conclusion was "not inconsistent with" the United State's Supreme Court's decision in ***Foucha v. Louisiana***, 504 U.S. 71 (1992), which the court read as permitting the continued confinement of dangerous but sane NGI acquittees in mental health facilities "so long as they are treated in a manner consistent with the purposes of their commitment, *e.g.*, there must be a medical justification to continue holding a sane but dangerous insanity acquittee in a mental health facility." ***Randall I***, 192 Wis. 2d at 807.

¶33 Stowe argues that, in this case, the State is "not housing [him] in a facility appropriate to his condition and is not providing him with care and treatment to overcome that which makes him allegedly dangerous." In other words, he asserts he is not receiving any "therapeutic benefit" from his continued confinement at Mendota. He therefore argues WIS. STAT. § 971.17(4)(d) is unconstitutional as applied to him because it permits his continued confinement based solely on a finding of dangerousness, even though he is no longer mentally ill and there is no "medical justification" for his continued confinement.

¶34 As the State points out, Stowe did not raise this argument in the circuit court. "It is a fundamental principle of appellate review that issues must be preserved at the circuit court. Issues that are not preserved at the circuit court, even alleged constitutional errors, generally will not be considered on appeal." ***State v. Huebner***, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727.

¶35 Although we may exercise our discretion to address the merits of a forfeited argument, *see* ***State v. Caban***, 210 Wis. 2d 597, 609, 563 N.W.2d 501 (1997), we decline to do so here for two reasons. First, one of the purposes of the forfeiture rule is to give "both parties and the circuit court notice of the issue and a fair opportunity to address" it. ***State v. Ndina***, 2009 WI 21, ¶30, 315 Wis. 2d 653,

761 N.W.2d 612. Although the ultimate issue of whether WIS. STAT. § 971.17(4)(d) is unconstitutional as applied to Stowe is a question of law for our independent review, *see* ***State v. Smith***, 2010 WI 16, ¶8, 323 Wis. 2d 377, 780 N.W.2d 90, important factual issues bear upon that question—for instance, the nature and extent of the treatment Stowe is currently receiving, whether that treatment is providing any therapeutic benefit, and the impact of Stowe's refusal to engage in treatment. Had Stowe raised his as-applied challenge to § 971.17(4)(d) in the circuit court, the parties could have presented additional evidence pertaining to these factual issues. The absence of such evidence hinders our ability to address Stowe's as-applied challenge.

¶36 Second, as the State notes, conditional release proceedings in NGI cases are "recurring events." An NGI acquittee may file a petition for conditional release "if at least 6 months have elapsed since the initial commitment order was entered, the most recent release petition was denied or the most recent order for conditional release was revoked." WIS. STAT. § 971.17(4)(a). Thus, applying the forfeiture rule in Stowe's current appeal will not permanently foreclose him from raising his as-applied constitutional challenge. Instead, he will have an opportunity to raise that argument when he next petitions for conditional release. This factor militates against addressing the merits of Stowe's argument in the instant appeal.

¶37 We also decline Stowe's invitation to review his as-applied challenge to WIS. STAT. § 971.17(4)(d) under the plain error doctrine. "The plain error doctrine allows appellate courts to review errors that were otherwise waived by a party's failure to object." ***State v. Jorgensen***, 2008 WI 60, ¶21, 310 Wis. 2d 138, 754 N.W.2d 77. However, the error must be "obvious and substantial," and courts "should use the plain error doctrine sparingly." ***Id.*** (quoted source omitted).

Here, beyond baldly asserting that an "obvious and substantial" violation of his constitutional right to liberty has occurred, Stowe does not develop any argument indicating why we should use the plain error doctrine to reach the merits of his as-applied constitutional challenge. He does not, for instance, cite cases in which Wisconsin courts have used the plain error doctrine to review similar constitutional claims. We need not address undeveloped arguments. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶38 Stowe also asserts that, because WIS. STAT. § 971.17(4)(d) is unconstitutional as applied to him, "justice has miscarried," and we should therefore grant him discretionary reversal in the interest of justice under WIS. STAT. § 752.35. Again, however, Stowe's two-sentence argument in this regard is undeveloped, in that it merely states the statutory standard without explaining in any detail why discretionary reversal is warranted in the instant case. We therefore decline to address Stowe's discretionary reversal argument. *See* ***Pettit***, 171 Wis. 2d at 646-47.

III. Facial constitutional challenge to WIS. STAT. § 971.17(4)(d)

¶39 Finally, Stowe argues WIS. STAT. § 971.17(4)(d) is unconstitutional on its face because it permits the continued confinement of an NGI acquittee based on dangerousness alone. However, as Stowe acknowledges, the Wisconsin Supreme Court found a similar, predecessor statute facially valid in ***Randall I***, rejecting the defendant's argument that the statute violated his right to due process because it permitted his continued confinement based solely on a determination that he was a danger to himself or others. *See* ***Randall I***, 192 Wis. 2d at 806-07. We have no power to overrule, modify, or withdraw language from a previous supreme court decision. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189, 560 N.W.2d

246 (1997). Based on ***Randall I***, we therefore reject Stowe's argument that § 971.17(4)(d) is facially unconstitutional.

By the Court.—Order affirmed.

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