COURT OF APPEALS
DECISION
DATED AND FILED

October 9, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP74 **Cir. Ct. No. 2006CI9**

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

IN RE THE COMMITMENT OF WILLIE KAY MACLIN:
STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

WILLIE KAY MACLIN,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: GLENN H. YAMAHIRO, Judge. *Affirmed*.

Before Curley, P.J., Brennan and Bradley, JJ.

¶1 PER CURIAM. Willie Kay Maclin appeals from an order of the circuit court that denied his petition for discharge from a WIS. STAT. ch. 980

(2011-12)[1] commitment. Maclin contends there was insufficient evidence to show he remains a sexually violent person. We affirm the circuit court.

¶2 In 1993, Maclin was convicted on two counts of first-degree sexual assault of a child, stemming from his ongoing assault of the six-year-old daughter of his live-in girlfriend. The State filed its original commitment petition in 2006, and Maclin was ordered committed as a sexually violent person on May 9, 2008.

¶3 On September 12, 2012, Maclin petitioned for discharge from the commitment. The petition was sufficient to entitle Maclin to a hearing. He waived his right to a jury, and the petition was tried to the circuit court on May 28-29, 2014. The circuit court denied the petition on July 2, 2014, concluding Maclin was more likely than not to "engage in a future act of sexual violence."

¶4 "A committed person may petition the committing court for discharge at any time." WIS. STAT. § 980.09(1). When, as here, the circuit court determines that 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. Sec. 980.09(2). At the hearing, the State "has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment as a sexually violent person." Sec. 980.09(3). If the State fails to fulfill its burden, the petitioner is to be discharged. Sec. 980.09(4).

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

¶5 To prove a petitioner meets the criteria for commitment as a sexually violent person and, thus, should remain committed, the State must show three things: that the person has been convicted of a sexually violent offense; that the person has a mental disorder; and that the person 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 JI—CRIMINAL 2502; *see also* WIS. STAT. § 980.01(7).

¶6 A "sexually violent offense" includes first-degree sexual assault. *See* WIS. STAT. §§ 980.01(6), 948.02(1). Maclin does not dispute that he was convicted of a sexually violent offense. 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." Sec. 980.01(2). Maclin also does not dispute that he has been diagnosed with a qualifying mental disorder. The circuit court found, based on the testimony of two psychologists and documentation of multiple prior evaluations, that Maclin has pedophilic disorder.[2]

¶7 Where Maclin argues the circuit court erred is in its conclusion that the State had satisfactorily established that he 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. He claims that the expert opinion on which the circuit court relied is wholly lacking in probative value and does not support the circuit court's decision.

[2] The experts disputed whether Maclin also had some type of personality disorder, though that disagreement is irrelevant to this appeal.

¶8 We review the circuit court's determination with the same sufficiency-of-the-evidence standard that we use to review criminal convictions. *See* ***State v. Brown***, 2005 WI 29, ¶¶5, 42, 279 Wis. 2d 102, 693 N.W.2d 715. This court will not reverse a conviction "unless the evidence, viewed most favorably to the State and conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***Id.***, ¶39. In other words, the test is "whether a circuit court, acting reasonably, could be … convinced by evidence it has a right to believe and accept as true" that Maclin is a sexually violent person. ***Id.***, ¶40. Witness credibility and the weight of evidence are left to the circuit court, and if multiple reasonable inferences are supported by the evidence, we adopt the inference that supports the circuit court's decision. ***Id.*** We do not substitute our judgment for the fact finder's unless the evidence is inherently or patently incredible. *See* ***State v. Saunders***, 196 Wis. 2d 45, 54, 538 N.W.2d 546 (Ct. App. 1995).

¶9 Three psychologists testified: Dr. Bradley Allen[3] for the State, and Drs. Michael Woody and Craig Rypma for Maclin. Allen diagnosed Maclin with pedophilic disorder and concluded he was more likely than not to reoffend sexually. Woody also diagnosed Maclin with pedophilic disorder, but concluded he was not more likely than not to reoffend sexually. Rypma did not diagnose Maclin with any mental disorder and also opined that, as Maclin puts it, "due to his age, [Maclin's] risk of reoffense has declined to the point where he is not more likely than not to reoffend."

[3] Maclin's appellate brief repeatedly refers to this expert as Dr. Bradley.

¶10 Maclin contends that Allen's ultimate opinion concerning his risk of reoffense is wholly lacking in probative value. He asserts that Allen's opinion ought to be reviewed by this court in light of all the other evidence presented—particularly the other experts' contradictory opinions. However, our standard of review does not permit us to reweigh the evidence. The question is only whether the verdict rendered is supported by plausible evidence, such that a reasonable fact finder could reach that decision. We do not consider what other verdicts might be supported by emphasizing different evidence. In this case, we conclude that the circuit court's decision has adequate support in the record.

¶11 The question facing the circuit court was whether Maclin remains dangerous "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." The more-likely-than-not standard means that the offender is more than 50% likely to commit another sexually violent offense. ***State v. Smalley***, 2007 WI App 219, ¶¶3, 10, 305 Wis. 2d 709, 741 N.W.2d 286.

¶12 The circuit court noted that Maclin's scores on the Static-99 and Static-99R actuarial tools, which predict a rate of reoffense, were "below the legal standard to maintain [Maclin's] commitment"—the scores corresponded with reoffense rates of 20-23% at five years and 30-32% at ten years. The circuit court noted, however, that the actuarial tests are not the only predictor of future offenses. If they were, the circuit court noted, "anybody around 50 years old would be best served to just sit it out and wait for the actuarial tools to provide the requisite score that would dictate their release."

¶13 Instead, the parties and the experts acknowledged "that the actuarials have a low to moderate correlation to sexual recidivism." Thus, the actuarials are

helpful, but they have limitations. One such limitation, noted by the circuit court, is that while the Static-99 and Static-99R identified a less-than-50% risk, that prediction only goes out five to ten years. WISCONSIN STAT. ch. 980 has no temporal limits specified and, thus, it asks a court to consider the risk of reoffense over an offender's lifetime.[4] Accordingly, the circuit court considered other factors beyond the Static-99 and Static-99R results.

¶14 It was uncontradicted that on a different instrument, the psychopathy checklist revised (PCL-R), Maclin scored a 25. That score, plus Maclin's high degree of sexually deviant interest in children, means an increased risk for sexual recidivism.

¶15 The circuit court noted that the actuarials did not consider Maclin's pattern of offending. He was charged with three counts of first-degree sexual assault for victimizing the six-year-old who lived with him over an extended period of time. While on supervision for two of those counts, Maclin absconded. When he was found, he was living with a woman with two young daughters. The circuit court did not believe that arrangement to be a coincidence.

¶16 The circuit court was further troubled by Maclin's seeming refusal to acknowledge he had done anything wrong. Though he pled guilty to two counts of first-degree sexual assault, he subsequently made comments to the presentence investigation author, distancing himself from the offenses—an indignant stance he maintained until speaking to his own experts in the context of the current petition, a strategy the circuit court identified as "self-serving."

[4] Additionally, the actuarial tools measure reoffense based only on rearrest and reconviction. They cannot account for a reoffense that is not reported.

¶17 The circuit court also stated that it would be easier to give the Static-99 and Static-99R results weight if there were any evidence that Maclin was "taking steps to make sure that the same conduct that brought him to this day will not occur in the future." There was no acknowledgement by Maclin of any such efforts—indeed, he continued to refuse treatment. Thus, the circuit court declined to give "undue weight" to the actuarial results and instead considered them "in the context of [Maclin's] total history" to conclude that Maclin was more likely than not to reoffend sexually.

¶18 Whether or not this court would have made the same determination, the evidence supporting that conclusion is neither so insufficient nor so inherently or patently incredible that we can say, as a matter of law, that no reasonable fact finder could have reached the same conclusion. *See* ***Brown***, 279 Wis. 2d 102, ¶39. Accordingly, we affirm the circuit court's order.

By the Court.—Order affirmed.

This opinion shall not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2013-14).