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DISTRICT II

April 13, 2016

To:

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You are hereby notified that the Court has entered the following opinion and order:

2015AP1457-NM

In re the commitment of James M. Lalor: State of Wisconsin v.
James M. Lalor (L.C. #2012CI2)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

James Lalor appeals from an order committing him as a sexually violent person under WIS. STAT. ch. 980 (2013-14).¹ Lalor's appellate counsel has filed a no-merit report pursuant to WIS. STAT. § 980.038(4) and WIS. STAT. RULE 809.32. Lalor received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

and an independent review of the record, we summarily affirm the order as there are no issues which would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses the following possible appellate issues: (1) the sufficiency of the evidence supporting the commitment order and (2) the timeliness of the petition. We agree with appellate counsel that these issues do not have arguable merit.

The WIS. STAT. ch. 980 petition was timely filed in relation to Lalor's upcoming release date. WIS. STAT. § 980.02(1m). The circuit court properly extended the time for holding a probable cause hearing for good cause shown. WIS. STAT. § 980.04(2)(b)1. Our review of the record confirms that Lalor properly waived his right to a trial within ninety days of the probable cause hearing, WIS. STAT. § 980.05(1), and properly waived his right to a jury trial, *State v. Denman*, 2001 WI App 96, ¶12, 243 Wis. 2d 14, 626 N.W.2d 296.

The record supports the circuit court's determination that Lalor is a sexually violent person, WIS. STAT. § 980.05(3)(a), i.e., Lalor was "convicted of a sexually violent offense" and "is dangerous because he ... suffers from a mental disorder that makes it likely that [he] will engage in one or more acts of sexual violence." WIS. STAT. § 980.01(7). Lalor stipulated to

prior sexually violent offenses, and experts² testified that Lalor had mental disorders that rendered him likely to commit acts of sexual violence. The evidence was sufficient, § 980.05(5), and the circuit court properly determined that Lalor should be committed “for control, care and treatment until” he is no longer a sexually violent person. WIS. STAT. § 980.06.

Our independent review of the record does not disclose any arguably meritorious issue for appeal. Because we conclude that there is no arguable merit to any issue that could be raised on appeal, we affirm the commitment order and relieve Attorney Jeffrey Jensen of further representation of Lalor in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Jeffrey Jensen is relieved of further representation of James Lalor in this matter.

Diane M. Fremgen
Clerk of Court of Appeals

² Three mental health experts testified during Lalor’s court trial. The parties did not request and the circuit court did not apply the WIS. STAT. § 907.02(1) *Daubert* evidentiary standard to the experts’ testimony. *State v. Alger*, 2015 WI 3, ¶4, 360 Wis. 2d 193, 858 N.W.2d 346. The *Daubert* standard applied to this case because the WIS. STAT. ch. 980 petition was filed on November 8, 2012, after the February 1, 2011 trigger date for application of the *Daubert* standard. *Alger*, 360 Wis. 2d 193, ¶4.

The admission of expert testimony is discretionary with the circuit court. *State v. Giese*, 2014 WI App 92, ¶16, 356 Wis. 2d 796, 854 N.W.2d 687, *review denied*, 2015 WI 24, ___ Wis. 2d ___, 862 N.W.2d 602. If the record sustains the circuit court’s decision, we will affirm it. *Prosser v. Cook*, 185 Wis. 2d 745, 753, 519 N.W.2d 649 (Ct. App. 1994). Each expert’s testimony clearly met the *Daubert* standard because the testimony was “based upon sufficient facts or data” and was the product of “reliable principles and methods” reliably applied by the expert to the facts of the case. WIS. STAT. § 907.02(1). No issue with arguable merit arises from the circuit court’s failure to apply the *Daubert* standard.