

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 30, 2002

Cornelia G. Clark
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. 01-2474
STATE OF WISCONSIN**

Cir. Ct. No. 95-CV-1036

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE COMMITMENT OF RUVEN SEIBERT:

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

RUVEN SEIBERT,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County:
DEE R. DYER, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Ruven Seibert appeals an order denying his motion for supervised release under WIS. STAT. § 980.08.¹ He argues that the trial court improperly allowed expert testimony from Lloyd Sinclair, who is not a licensed psychologist or psychiatrist. Sinclair opined that Seibert suffered from a disorder predisposing him to commit a crime of sexual violence. He also challenges the sufficiency of the evidence to support the trial court's finding that Seibert was still a sexually violent person. We reject these arguments and affirm the order.

¶2 Sinclair was qualified to testify as an expert witness. He has a bachelor's degree in sociology and correctional administration, a master's degree in social work, and twenty-seven years' experience as a sex therapist and sex educator. These credentials are sufficient to support Sinclair's claim of expertise and allow his testimony under WIS. STAT. § 907.02. See *State v. Sprosty*, 2001 WI App 231, ¶¶27, 29, 248 Wis. 2d 480, 636 N.W.2d 213.

¶3 Seibert argues that WIS. STAT. § 980.04(4) and WIS. ADM. CODE § HFS 99.04 require the appointment of a psychiatrist or licensed psychologist to perform an examination under ch. 980. That argument was rejected in *Sprosty*. *Id.* Section 980.04(3) is not a rule regarding the admissibility of expert testimony. Rather, it provides procedure for the circuit court to follow when a person is initially alleged to be a sexual predator. WISCONSIN ADM. CODE § HFS 99.03 only requires a psychiatrist or licensed psychologist to perform the initial examination under § 980.04. Nothing in the rule or statute applies that provision to a motion for supervised release under § 980.08.

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶4 Seibert argues that the State presented insufficient evidence to support the trial court's finding that he is still a sexually violent person, specifying three alleged deficiencies: (1) Sinclair's testimony, even if admissible, carries no weight; (2) the State cannot rely on a diagnosis of antisocial personality disorder; and (3) testimony that there was a forty-nine percent chance that Seibert would reoffend within ten years of release is not sufficient to satisfy the "much more likely than not" standard for substantial probability of reoffense. We reject each of these arguments.

¶5 Sinclair's credentials adequately establish him as an expert witness. The trier of fact could reasonably rely on his expert opinion. *State v. Kienitz*, 221 Wis. 2d 275, 306, 585 N.W.2d 609 (Ct. App. 1998).

¶6 A diagnosis of antisocial personality disorder, coupled with sufficient evidence that Seibert is a sexually violent person, is sufficient to establish a mental disorder that makes it substantially probable that he will engage in acts of sexual violence under WIS. STAT. § 980.01(7). *See State v. Adams*, 223 Wis. 2d 60, 64, 588 N.W.2d 336 (Ct. App. 1998). In addition, Sinclair did not diagnose Seibert as suffering solely from antisocial personality disorder. Rather, Sinclair testified that Seibert also suffers from paraphilia NOS [not otherwise specified], and the court heard other evidence of Seibert's history of sexual misconduct that, along with his antisocial personality disorder, constitute an adequate basis for finding a substantial probability that he will reoffend.

¶7 Evidence of Seibert's forty-nine percent likelihood of recidivism referred to the likelihood of reoffending over the next ten years. Sinclair and the trial court were not required to limit their review to that time span. In addition, they did not rely entirely on that assessment. Sinclair also identified numerous

other risk factors that made it much more likely than not that Seibert would sexually reoffend.

By the Court.—Order affirmed.

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

