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**DISTRICT II**

March 4, 2026

To:

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Electronic Notice

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Clerk of Circuit Court  
Waukesha County Courthouse  
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Brian Patrick Mullins  
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You are hereby notified that the Court has entered the following opinion and order:

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2024AP1556-CR

State of Wisconsin v. Delbert G. Cleveland (L.C. #1996CF20)

Before Neubauer, P.J., Grogan, and Lazar, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Delbert G. Cleveland appeals from an order of the circuit court denying his petition for supervised release, arguing the court's order was not supported by sufficient evidence. Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).<sup>1</sup> We affirm.

In 1978, Cleveland was convicted of second-degree sexual assault and placed in the Mendota Mental Health Institute Adolescent Treatment Unit. In 1980, he was transferred to

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

Ethan Allen School until he turned 18 years old. A week after he was released from custody, he forced a woman into a bathroom, partially undressed her, and attempted to sexually assault her. Cleveland was convicted of attempted second-degree sexual assault for this offense and was sentenced to five years in prison. In 1983, ten days after his release from prison, he exposed himself to a woman in a public park and admitted exposing himself to several other women that same afternoon. He was subsequently convicted of lewd and lascivious conduct, so his previously granted parole was revoked, and he was returned to prison. In 1983 less than three weeks after his release from prison and while he was on supervision, Cleveland sexually assaulted a woman and was convicted of second-degree sexual assault as a repeater and sentenced to ten years in prison.

In 1996, the State petitioned to commit Cleveland as a sexually violent person under WIS. STAT. § 980.02(1)(b) (1993). In support of its allegation that Cleveland was predisposed to engage in acts of sexual violence, the State presented a licensed psychologist's conclusions diagnosing Cleveland with anti-social personality disorder and sexual sadism. A jury trial was conducted, and Cleveland was found to be a sexually violent person. The circuit court ordered that Cleveland be committed to institutional care pursuant to WIS. STAT. § 980.06.

On July 22, 2020, Dr. Donn Kolbeck, a psychologist at Sand Ridge Secure Treatment Center (Sand Ridge), issued a report opining that Cleveland met the criteria for supervised release under WIS. STAT. § 980.08(4)(cg). The report stated that “Cleveland ha[d] adapted his behavior to the institutional environment” and displayed “improved management of his impulsivity[.]” Kolbeck observed that Cleveland “display[ed] consistently effective management of his criminal personality traits” as evidenced by “no recent documented instances of his lying, superficiality, manipulation, or callousness.”

On August 12, 2022, another psychologist at Sand Ridge, Dr. Amelia Fystrom, issued a report opining that Cleveland met the criteria for significant progress in treatment. The report also concluded that Cleveland was “demonstrating sufficiently sustained change in the behaviors linked to his offending[.]” as evidenced in part by Cleveland not receiving any behavior dispositional records (BDR) since 2021. On August 16, 2022, Cleveland petitioned for supervised release pursuant to WIS. STAT. § 980.08(1). In September of 2022, prior to the hearing on his petition, Cleveland received a BDR for stealing a bag of chips from a patient tray at Sand Ridge. He admitted he had attempted to steal from patient trays in the past. The following day he received another BDR for having a dirty room and possessing contraband.

The circuit court conducted a court trial on his petition on April 3, 2023. Fystrom testified that Cleveland met the statutory criteria and was “ready for supervised release.” She stated Cleveland demonstrated insight into his “long-standing hostility towards women” and had recognized that “he is still prone to becoming sexually aroused to violence and forced sex.” She explained that “he has really thought about what contributed to his offending and is working towards being able to consistently use coping and problem-solving skills to manage the expression of [his] risk factors.”

Fystrom also testified regarding the BDR Cleveland received for stealing a bag of chips. She confirmed that, after an employee told Cleveland he would be searched, Cleveland “passively resist[ed] the effort by the employee to locate the chips[.]” The employee discovered a bag of chips in his pocket, and Cleveland initially lied at a hearing related to the BDR by stating this was the first time he had stolen chips. The day after this incident, staff searched Cleveland’s room and discovered contraband, resulting in another BDR. Fystrom testified

Cleveland “does have a tendency to violate rules” but opined that stealing chips was a symptom of his “anti-social personality disorder” not “directly relat[ed] to his risk to sexually reoffend[.]”

The circuit court<sup>2</sup> entered an order denying the petition, finding Cleveland failed to prove by clear and convincing evidence that he met the statutory criteria for supervised release. The court placed particular emphasis on Cleveland’s failure to carry his burden in proving that he is likely to sustain his treatment progress after release, that it is substantially probable he will not engage in an act of sexual violence on supervised release, and that he can be reasonably expected to comply with his treatment requirements and the rules of supervision. Cleveland appeals, arguing the court’s order was not supported by sufficient evidence.

WISCONSIN. STAT. § 980.08(4)(cg) prohibits supervised release unless the circuit court finds the following criteria are met:

(1) [t]he person [ha]s ma[de] significant progress in treatment [that] can be sustained while on supervised release; (2) [i]t is substantially probable that the person will not engage in an act of sexual violence while on supervised release; (3) [t]reatment that meets the person’s needs and a qualified provider of the treatment are reasonably available; (4) [t]he person can be reasonably expected to comply with his or her treatment requirements and with all of his or her conditions or rules of supervised release that are imposed by the court or by the department; and (5) [a] reasonable level of resources can provide for the level of residential placement, supervision, and ongoing treatment needs that are required for the safe management of the person while on supervised release.”

The petitioner bears the burden of proving these criteria by clear and convincing evidence. *State v. West*, 2011 WI 83, ¶81, 336 Wis. 2d 578, 800 N.W.2d 929.

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<sup>2</sup> The Honorable Paul Bugenhagen, Jr., entered this order.

An order denying a petition for supervised release is reviewed under the sufficiency of the evidence standard. *State v. Brown*, 2005 WI 29, ¶5, 279 Wis. 2d 102, 693 N.W.2d 715. We independently review the record to determine if a circuit court, acting reasonably, could conclude that the petitioner does not meet the criteria for supervised release. *Id.*, ¶40. Our review is “highly deferential” to the factfinder’s verdict, and the party “challenging the sufficiency of the evidence bears a heavy burden to show the evidence could not reasonably have supported” the verdict. *State v. Beamon*, 2013 WI 47, ¶21, 347 Wis. 2d 559, 830 N.W.2d 681. While we independently review the record, we “give[] deference to the circuit court’s strength in determining the credibility of witnesses and in evaluating the evidence[.]” *Brown*, 279 Wis. 2d 102, ¶44.

We conclude sufficient evidence supported the circuit court’s order denying Cleveland’s petition. The Record reflects Cleveland’s “very significant history of sexual[ly] motivated violence[,]” his history of minor offenses and rule violations while under commitment, and the relatively recent nature of his progress in treatment. The court reasonably concluded Cleveland failed to prove by clear and convincing evidence the progress he made in treatment could be sustained on supervised release, that he is likely to conform to the requirements of supervised release, and that it is substantially probable he would not engage in an act of sexual violence while on supervised release.

A circuit court is authorized to consider the “nature and circumstances of the behavior that was the basis” for the petitioner’s commitment. WIS. STAT. § 980.08(4)(c). The severity of Cleveland’s history of sexual violence cannot be overstated. Cleveland was convicted of multiple sexual assaults, and many of his offenses occurred immediately after his release from custody stemming from prior offenses. During one of these sexual assaults, Cleveland held the

victim at knife-point. Cleveland’s diagnosis of sexual sadism is based, in part, on his “recurrent, intense, sexually arousing thoughts, fantasies and actions involving forcing women to engage in sex with him and hurting (and even killing) women.”

After petitioning for release, Cleveland committed a rule violation by stealing a bag of chips. He initially lied and denied that he had stolen food in the past. When confronted about this incident, Fystrom testified Cleveland “did try to explain away or minimize his behavior.” When staff subsequently inventoried Cleveland’s room, he was discovered to be in possession of contraband and received another BDR. The circuit court reasonably concluded this history raises significant doubts about Cleveland’s likelihood of success conforming to the exacting requirements of supervised release.

The circuit court also noted that, while Cleveland has been committed for approximately 40 years, Fystrom and Kolbeck only testified to Cleveland making significant progress “in the last 12 to 18 months[.]” Given that Cleveland has been committed for decades, a court could reasonably conclude that signs of significant improvement occurring within only the past one to two years is insufficient to demonstrate, to the degree required, that Cleveland’s progress would likely be sustained on supervised release. Furthermore, Cleveland’s past treatment progress has been inconsistent. During a polygraph test in March of 2019, he denied having “sexual thoughts of violence or force” and this statement was assessed to be truthful. However, in 2020, “he regressed and produced two untruthful polygraphs” regarding violent sexual fantasies. In light of these considerations, Cleveland did not meet his “heavy burden to show the evidence could not reasonably have supported” the court’s order. *Beamon*, 347 Wis. 2d 559, ¶21.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*