

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 6, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-1039

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE COMMITMENT OF HENRY F. POCAN:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

HENRY F. POCAN,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County:
HAROLD V. FROEHLICH, Judge. *Affirmed.*

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

PER CURIAM. Henry Pocan appeals an order committing him to a secure facility as a sexual predator. He argues that the State presented insufficient evidence to establish beyond a reasonable doubt that he was a proper subject for commitment. We reject that argument and affirm the order.

To justify a commitment under ch. 980, STATS., the State had to prove beyond a reasonable doubt that Pocan had been convicted of a sexually violent offense, that he suffered from a mental disorder that predisposes him to engage in sexual violence and that he is dangerous to others because the mental disorder creates a substantial probability that he will engage in acts of sexual violence. *See* WIS J I—CRIMINAL 2502. The test for determining whether the State met that burden is whether the evidence presented was so lacking in probative value and force that it could be said as a matter of law that no trier of fact, acting reasonably, could have found that the State met its burden beyond a reasonable doubt. *See State v. Gomez*, 179 Wis.2d 400, 404, 507 N.W.2d 378, 380 (Ct. App. 1993).

The trial court's findings are supported by the testimony of Dr. Howard Porter, a clinical psychologist employed by the Department of Corrections. His conclusion that Pocan is a sexual predator was supported by Pocan's personal and psychiatric history, his history of criminal and antisocial behavior, and the results of his previous attempts at treatment. Pocan has spent most of his adult life in prison or treatment facilities. When given mandatory release in June, 1992, he remained in the community for sixteen months until his parole was revoked. He was placed in the Wisconsin Resource Center approximately four times because of symptoms of schizophrenia. He suffered auditory hallucinations and was also diagnosed with an antisocial personality disorder. Treatment was ineffective because Pocan refused to get involved in it. During group therapy, Pocan once stated: "I have to get out sometime and when I do, I am going to do what I have to do, but I won't get caught this time. I have a point to prove, and I am going to do it. Nobody can stop me."

When Pocan was fourteen-years old, he asked other boys in a group home if they wanted to perform oral sex. When he was nineteen-years old, Pocan ran away with a thirteen-year-old girl and was sexually involved with her. He also spoke with a psychiatrist about having sex with a horse. Pocan was convicted of sexually assaulting an elderly woman. He stated that he could not remember raping the woman, showing that he shielded himself of feelings of guilt or showed that he was incredibly impulsive according to Dr. Porter. Pocan's twelve-year-old stepdaughter complained that he was making sexual comments to her. Pocan's former probation agent testified that Pocan also made unlawful telephone calls to a woman in her eighties and discussed sexual topics. He believed that Pocan was grooming potential future victims.

Pocan described his sexual impulsivity by use of the phrase "the mind going blank and the body taking over." He did not feel that he needed sexual offender treatment and refused to go to a half-way house for sexual assault treatment. From this evidence, Dr. Porter concluded and the trial court reasonably found that Pocan met the definition of a sexually violent person beyond a reasonable doubt.

Pocan argues that Dr. Porter's testimony was insufficient as a matter of law based upon the "factors" presented by Pocan's expert witnesses. One of Pocan's witnesses, Dr. Craig Monroe, did not see a causal connection between Pocan's mental disorders and the likelihood that he would commit acts of sexual violence. Dr. Monroe apparently required a pattern of sexual misconduct that he did not believe was present in this case.

Aspects of Monroe's testimony, however, support the trial court's finding. Monroe's report listed six factors applicable to Pocan that are "highly

supported by research as being predictive of sexual recidivism”: (1) an extra-familial victim; (2) social incompetence; (3) juvenile antisocial behavior; (4) nonsexual criminality; (5) personality disorder; and (6) a history of alcohol abuse. Pocan meets all six of these criteria. Monroe also enumerated ten additional factors applicable to Pocan that are somewhat predictive of sexual recidivism: (1) use of force or threat of force during sexual assault; (2) attitudes supporting sexual reoffending; (3) pervasive anger or preoccupation with aggressive fantasies; (4) impulsivity; (5) denial or minimization of offenses and denial of the need for treatment; (6) genital-genital contact with his female victim; (7) seriousness of index offense; (8) separation from his parents before age of sixteen; (9) failure on prior conditional release; and (10) failure to complete sex offender treatment. Pocan also satisfies each of these criteria.

Even though Monroe’s ultimate conclusion supported Pocan, the trial court could reasonably rely on the statements and observations in Monroe’s report to reach the opposite conclusion. The trier of fact may accept portions of an expert’s testimony, reject other portions and draw conclusions that differ from the expert’s. *See State v. Owen*, 202 Wis.2d 620, 633-35, 551 N.W.2d 50, 56 (Ct. App. 1996). Pocan’s personal history, Porter’s conclusions and consideration of Monroe’s factors constitute sufficient evidence to support the commitment order.

By the Court.—Order affirmed.

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

