COURT OF APPEALS
DECISION
DATED AND FILED

April 19, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP1300 **Cir. Ct. No. 2003CI3**

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

IN RE THE COMMITMENT OF JAMEEL H. ALI:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

JAMEEL H. ALI,

RESPONDENT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEAN W. DI MOTTO, Judge. *Affirmed*.

Before Wedemeyer, P.J., Curley and Kessler, JJ.

¶1 KESSLER, J. Jameel H. Ali appeals from a judgment and an order committing him to a secure facility as a sexually violent person. Ali contests his commitment on grounds that WIS. STAT. ch. 980 (2003-04) [1] is unconstitutional because it fails to require proof of imminent danger and because it is vague. We affirm because we are bound by Wisconsin Supreme Court precedent concluding that Chapter 980 is constitutional. *See* ***State v. Post***, 197 Wis. 2d 279, 293-94, 541 N.W.2d 115 (1995); ***State v. Carpenter***, 197 Wis. 2d 252, 258-59, 541 N.W.2d 105 (1995).

DISCUSSION

¶2 Ali does not challenge any of the factual findings that provided the basis for his commitment under WIS. STAT. ch. 980. His sole argument is his constitutional challenge to Chapter 980, which presents a question of law that this court reviews *de novo*. *See* ***Post***, 197 Wis. 2d at 301. "There is a presumption of constitutionality for legislative enactments and every presumption favoring validity of the law must be indulged." ***Id.*** "Further, the challenger bears the burden to prove a statute unconstitutional beyond a reasonable doubt." ***Id.***

¶3 Ali was previously convicted of a criminal sexual offense. To commit such an individual as a sexually violent person under WIS. STAT. ch. 980, the State must prove that: (1) the individual has been convicted of a sexually violent offense; (2) the petition to commit the person was filed within ninety days of the person's scheduled release for a sexually violent offense; (3) the individual has a mental disorder; and (4) "[t]he person is dangerous to others because the

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

person's mental disorder makes it likely that he or she will engage in acts of sexual violence." *See* WIS. STAT. § 980.02(2).[2]

¶4 Ali's appeal focuses on this fourth element. He argues that "[c]ivil commitment in Wisconsin long has required a finding of dangerousness and, from the beginning, that dangerousness has required some type of temporal context." Ali notes that in 1972, the Federal District Court for the Eastern District of Wisconsin held that Wisconsin's civil commitment standard would survive a due process challenge only if the State could prove "that there is an extreme likelihood that if the person is not confined he will do immediate harm to himself or others" and that the "dangerousness is based upon a finding of a recent overt act, attempt or threat to do substantial harm to oneself or another." ***Lessard v. Schmidt***, 349 F. Supp. 1078, 1093 (E.D. Wis. 1972) (subsequent history omitted). In light of this precedent, Ali argues, WIS. STAT. ch. 980 is unconstitutional because, as he correctly observes, it "makes no attempt to restrict the time period [of the likely sexual violence] to anything resembling the immediate future."

¶5 In response, the State argues that under both Wisconsin Supreme Court and United States Supreme Court precedent, the statute passes constitutional

[2] The fourth element, found in WIS. STAT. § 980.02(2)(c), previously required the State to prove that the "person is dangerous to others because the person's mental disorder creates a substantial probability that he or she will engage in acts of sexual violence." *See* WIS. STAT. § 980.02(2)(c) (2001-02). This subsection was amended by 2003 Wisconsin Act 187, which replaced the phrase "creates a substantial probability" with "makes it likely." The same Act created WIS. STAT. § 980.01(1m), which defined the term "likely" as "more likely than not."

Ali does not contend that our analysis should be affected by the amendments to WIS. STAT. § 980.02(2)(c), which occurred after the commitment petition was filed in this case but before the trial concluded. Our conclusions apply equally to both the former and new subsection, consistent with our supreme court's recognition that as used in WIS. STAT. ch. 980, the terms "substantial probability" and "substantially probable" both mean "much more likely than not." *See* ***State v. Curiel***, 227 Wis. 2d 389, 395, 402-413, 597 N.W.2d 697 (1999).

muster. In ***Post***, our supreme court rejected numerous constitutional challenges to WIS. STAT. ch. 980, including arguments that the chapter violated substantive due process and equal protection.[3] 197 Wis. 2d at 293-94. Although the committed person in ***Post*** did not raise the identical argument raised in this appeal, we conclude that we are bound by the supreme court's conclusion that Chapter 980 is constitutional and, in particular, that it does not violate substantive due process. *See* ***State v. Lossman***, 118 Wis. 2d 526, 533, 348 N.W.2d 159 (1984) (court of appeals is bound by supreme court precedent). Ali's recourse rests with the supreme court, rather than this court.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.

[3] A companion case concluded that WIS. STAT. ch. 980 did not violate the constitution on either double jeopardy or ex post facto grounds. ***State v. Carpenter***, 197 Wis. 2d 252, 258-59, 541 N.W.2d 105 (1995).