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**DISTRICT III/IV**

March 16, 2018

To:

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

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2017AP962-NM

In re the commitment of Montgomery L. Clark: State of Wisconsin  
v. Montgomery L. Clark (L.C. # 2008CI1)

Before Sherman, Kloppenburg and Fitzpatrick, 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).**

Montgomery Clark appeals an order committing him to the care and custody of the Department of Health and Family Services following his adjudication as a sexually violent person pursuant to Chapter 980 of the Wisconsin Statutes. Attorney Dennis Schertz has filed a

no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2011-12);<sup>1</sup> *see also Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses the sufficiency of the evidence, the jury instructions, a sleeping juror, and the assistance of counsel. Clark was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues and therefore affirm the commitment order.

As to the sufficiency of the evidence, the State needed to prove beyond a reasonable doubt that Clark had a conviction for a sexually violent offense; that he had a mental disorder that predisposed him to commit sexually violent offenses; and that he was more likely than not to reoffend. *See* WIS. STAT. §§ 980.01(7) and 980.05(3); WIS JI-CRIMINAL 2502. The State introduced a judgment of conviction to establish that Clark had been convicted of a sexually violent offense, and had the probation agent who had written the PSI and supervised Clark for that offense identify the judgment and discuss Clark's criminal history. The State then presented expert testimony from two mental health professionals, Dr. Christopher Tyre and Dr. Sheila Fields, who opined that Clark suffered from mental disorders that predisposed him to commit sexually violent offenses and that he was more likely than not to reoffend. Specifically, both Tyre and Fields diagnosed Clark with the paraphilic disorder of sexual sadism, while Tyre provided an additional diagnosis of a personality disorder with narcissistic and borderline features.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

The jury could properly rely on the testimony of the State's expert witnesses to reach its verdict, even though Clark presented his own expert witnesses who had reached different conclusions. In turn, the circuit court's order committing Clark to the custody of the Department of Health and Family Services was properly based upon the jury's verdict that Clark was a sexually violent person. *See* WIS. STAT. § 980.06.

We further agree with counsel's analysis in the no-merit report that the jury instructions were proper, that the parties resolved a potential problem with a sleeping juror by naming that juror the alternate, and that the record does not reveal any basis for an ineffective assistance of counsel claim.

Upon our independent review of the record, we have found no other arguable basis for reversing the commitment order. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Therefore,

IT IS ORDERED that the commitment order is summarily affirmed under WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved of any further representation of Montgomery Clark in this matter. *See* WIS. STAT. RULE 809.32(3).

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*