

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 11, 2018

Sheila T. Reiff
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. 2016AP2057-CR

Cir. Ct. No. 2013CF374

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

NATALIE J. BOSIN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Fond du Lac County:
RICHARD J. NUSS, Judge. *Affirmed.*

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Per curiam opinions 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).

¶1 PER CURIAM. Natalie Bosin appeals from a circuit court order denying her petition for conditional release. Bosin entered a plea agreement that

included a determination that she was not guilty of three counts of battery by a prisoner due to mental disease or defect. As a result, Bosin was committed pursuant to WIS. STAT. § 971.17 (2012-13) to the Department of Health Services for nine years, and she was placed at Winnebago Mental Health Institute (WMHI). In March 2016, Bosin petitioned the circuit court for conditional release under § 971.17(4) (2015-16).¹ The circuit court denied Bosin’s petition because she did not meet the statutory standards for conditional release. We affirm.

¶2 On appeal, Bosin argues that the evidence was not sufficient to support the circuit court’s order denying her petition for conditional release. We apply the sufficiency of the evidence standard, and we will affirm the circuit court’s findings if the findings are supported by credible evidence. *State v. Randall*, 2011 WI App 102, ¶¶13, 17, 336 Wis. 2d 399, 802 N.W.2d 194. We defer to the circuit court’s credibility determinations and any reasonable inference the court drew from the evidence. *Id.*, ¶14. The circuit court was free to accept some aspects of the testimony and reject others and determine the weight and credibility of the testimony and other evidence. *State v. Kienitz*, 227 Wis. 2d 423, 435, 438-39, 597 N.W.2d 712 (1999); *Randall*, 336 Wis. 2d 399, ¶40.

¶3 A circuit court shall grant a WIS. STAT. § 971.17(4) petition for conditional release unless the court “finds by clear and convincing evidence that the person would pose a significant risk of bodily harm to himself or herself or to others or of serious property damage if conditionally released.” Sec. 971.17(4)(d).

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

The State bears the burden to prove that conditional release is not warranted because the person remains dangerous. *Randall*, 336 Wis. 2d 399, ¶¶15, 17.

¶4 In making the conditional release decision, the circuit court may consider a nonexhaustive list of factors set out in WIS. STAT. § 971.17(4)(d). *Randall*, 336 Wis. 2d 399, ¶16.

In making this determination, the court may consider, without limitation because of enumeration, the nature and circumstances of the crime, the person's mental history and present mental condition, where the person will live, how the person will support himself or herself, what arrangements are available to ensure that the person has access to and will take necessary medication, and what arrangements are possible for treatment beyond medication.

Sec. 971.17(4)(d).

¶5 At the April 27, 2016 hearing on Bosin's petition for conditional release, the circuit court considered Dr. Kent Berney's psychological evaluation and testimony, incidents in March and April 2016 in which Bosin requested medication but was told to wait and then engaged in volatile conduct, and an April 2016 status report from Dr. Raul de Jesus addressing Bosin's status at WMHI and her progress in treatment as evidenced by her multiple moves between WMHI units as her conduct improved or declined.

¶6 Berney testified about Bosin's volatile conduct in March and April 2016. Both incidents had a similar beginning: Bosin requested anxiety-related and other behavioral control medications that were prescribed for her on an as-needed basis, but her request was not fulfilled as quickly as she desired which led to volatile conduct. In the March incident, Bosin became aggressive, threw items in her room, and was restrained and placed in seclusion. In the April incident, Bosin was angry, yelled at staff, flipped over a table, and voluntarily withdrew

from the situation and went to seclusion. Although Bosin had developed some strategies to cope with her personal circumstances and the environment in her treatment unit, those strategies were not effective during the incidents discussed above.

¶7 Berney opined that Bosin’s aggressive behavior or behavioral dysregulation were related to changes in her medication. Berney agreed that Bosin needed to continue developing her coping strategies around medication issues. However, Berney opined that continued inpatient care at WMHI would not be beneficial for Bosin because WMHI was not complying with her treatment plan (which included medication on request), and she would decompensate as a result of the medication delay. Berney advocated for treating Bosin “in [a different] environment that will enhance the probability that she will continue to reduce her volatility and behavioral discontrol and enhance her self-esteem.” Berney opined that if Bosin were released from WMHI and placed in a different environment with a treatment plan, she would not pose a substantial risk of danger to herself or others or property. However, if Bosin were not placed at another treatment facility able to implement a very clear and definitive treatment plan, Berney “would not support conditional release because without that level of care [he did not] believe that she will be safe and I believe she will present a danger.”

¶8 In denying Bosin’s conditional release petition, the circuit court considered the appropriate legal standard: whether Bosin remains dangerous to herself or others. See *Randall*, 336 Wis. 2d 399, ¶¶15, 17. Relying upon evidence it found credible, the circuit court found that Bosin’s current mental health situation was unstable and her medication regime was not sufficiently stable or structured to avoid decompensation. The court considered Bosin’s mental health history (which included diagnosis of several mental disorders), her conduct at

WMHI (including her conduct in March and April 2016), and her ongoing treatment needs. The court emphasized that Bosin had to satisfy the applicable legal standards for conditional release, not be on the path toward meeting those standards after being released from WMHI for treatment elsewhere. While Bosin was moving in the direction of release, the court determined that she was not ready for release because she remained dangerous to herself or others. The court was not prepared to release Bosin so that she could attempt to reach the applicable legal standards outside of her current treatment setting.

¶9 We agree with the State that the record is informative vis-à-vis other WIS. STAT. § 971.17(4)(d) considerations relevant to a conditional release petition: the nature and circumstances of Bosin’s three most recent crimes of battery by a prisoner² and no indication that Bosin had the ability to support herself once released.

¶10 We conclude that the State met its burden to show by clear and convincing evidence that Bosin did not satisfy the legal standards for conditional release. We further conclude that the evidence was sufficient to deny Bosin’s conditional release petition because Bosin remained dangerous to herself and others.

By the Court.—Order affirmed.

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

² We agree that the circuit court did not expressly consider Bosin’s prior crimes. See *State v. Randall*, 2011 WI App 102, ¶16, 336 Wis. 2d 399, 802 N.W.2d 194. Nevertheless, the record provides information relating to this factor.

