

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 28, 2001

Cornelia G. Clark
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.

No. 00-2318

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE COMMITMENT OF JACK R. MARTINSEN,

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

JACK R. MARTINSEN,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Lincoln County:
J. MICHAEL NOLAN, Judge. *Affirmed.*

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

¶1 PER CURIAM. Jack Martinsen appeals an order denying his petition for supervised release from his WIS. STAT. ch. 980 commitment. He argues that the trial court deprived him of a full and fair hearing when it refused to compel the special prosecutor to answer interrogatories concerning polygraph and

plethysmograph tests conducted at the Wisconsin Resource Center. The trial court concluded that the prosecutor had no authority over the resource center. Instead, the court signed an order granting Martinsen's counsel access to and copies of any writing maintained by the State, including the resource center materials that pertained to Martinsen, not limited to polygraph and plethysmograph data and interpretation. Because we conclude that Martinsen has not established any prejudice from the court's refusal to compel answers to the interrogatories we decline to decide whether interrogatories are an appropriate form of discovery, and we affirm the order denying supervised release.

¶2 Martinsen's petition for supervised release was initially supported by Dr. Susan Sachsenmaier. The prosecutor subsequently filed a motion requesting that the trial court adjourn the hearing on the petition because Sachsenmaier had recently changed her opinion and now recommended continued institutional placement. Her change of opinion resulted from a polygraph examination in which Martinson admitted to sexual offenses previously unknown to Sachsenmaier. She concluded that his treatment, based on two isolated incidents, was inappropriate and that Martinsen had gone through treatment in a state of denial, pretending that his victims did not exist because he had not been convicted of those offenses. Martinsen's attorney then submitted a set of interrogatories to the prosecutor, requesting information concerning the nature and results of any polygraph or plethysmograph examination administered to Martinsen. The trial court refused to compel the prosecutor to answer the interrogatories, but gave Martinsen's counsel full access to any writings maintained by the resource center.

¶3 On the first day of the hearing on the petition for supervised release, Martinsen's counsel reported that he had still not obtained any of the polygraph or plethysmograph materials. A court-appointed psychologist who supported

Martinsen's supervised release, Dr. Michael Galli, testified that the polygraph and plethysmograph reports were not available to him before the trial began. He was given access to the polygraph reports the evening before he was recalled to testify on the second day of the hearing. He testified that the disclosure of additional sexual offenses did not change his risk assessment or his opinion that Martinsen was a good candidate for supervised release.

¶4 Galli testified that the plethysmograph is the single best indicator of future risk, and he was unable to obtain reports regarding plethysmograph testing. It appears that no report of the plethysmograph had been prepared. Martinsen's counsel requested adjournment of the hearing to allow Galli an opportunity to review the plethysmograph data. The trial court denied the request. However, it invited a motion for reconsideration if, after receipt of the plethysmograph results, Martinsen's counsel believed that the results might make a difference. The court gave Sachsenmaier two weeks to complete the report on the plethysmograph and make it available to Martinsen's attorney. The record before this court does not disclose the results of the plethysmograph or Galli's opinion upon reviewing the results. Martinsen did not file a motion for reconsideration.

¶5 Martinsen has established no prejudice from the trial court's refusal to compel the prosecutors to answer interrogatories regarding the polygraph. The results of the polygraph were never offered or admitted into evidence. Neither of the expert witnesses relied on the results. Sachsenmaier's opinion arose from admissions Martinsen made during the polygraph test. The test result itself was irrelevant. Galli had an opportunity to review the polygraph results before he completed his testimony. The record discloses no basis for believing that answers

to interrogatories regarding the polygraph might have changed the outcome. *See* WIS. STAT. § 805.18 (1999-2000).

¶6 Likewise, Martinsen has not established any prejudice from the lack of interrogatories regarding the plethysmograph. Nothing in the record suggests that the plethysmograph results would have favored Martinsen's supervised release. Galli testified that Martinsen reported to him that he did not do very well on the plethysmograph test and that the recording device indicated Martinsen experienced sexual arousal while looking at a blank screen. Resource Center staff told Sachsenmaier that Martinsen demonstrated deviant sexual arousal to male infants.

¶7 The only prejudice Martinsen cites is that Galli's opinion would not be given much weight by the trial court because it was not based on the single test that Galli found most persuasive. After the trial court ordered that the report be prepared and shared with Martinsen's counsel, Martinsen did not accept the court's invitation to request reconsideration based on the test results or Galli's reaction to them. Nothing in the record suggests that compelling answers to interrogatories regarding the nature and results of the plethysmograph would have bolstered Galli's testimony.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

