COURT OF APPEALS
DECISION
DATED AND RELEASED

April 3, 1996

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.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 93-1663-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RICHARD STENSVAD,

Defendant-Appellant.

APPEAL from an order of the circuit court for Waukesha County: ROGER MURPHY, Judge. *Affirmed*.

Before Anderson, P.J., Nettesheim and Snyder, JJ.

PER CURIAM. Richard Stensvad appeals from a May 1993 order[1] denying his request for conditional release from Mendota Mental Health Institute. We affirm the trial court's refusal to release Stensvad from his insanity commitment.

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[1] On February 22, 1994, we placed this appeal on hold at Stensvad's request pending a decision by our supreme court in ***State v. Randall,*** 192 Wis.2d 800, 532 N.W.2d 94 (1995). ***Randall*** was decided in May 1995, and briefing then resumed in this appeal.

As a result of a 1974 verdict of not guilty of first-degree homicide by reason of mental disease, Stensvad was committed to a state mental health facility. In November 1992, Stensvad petitioned for reexamination pursuant to § 971.17(2), STATS., 1987-88,[2] and conditional release from his commitment at Mendota. Stensvad was examined by Dr. Gary Maier on behalf of the State and by Dr. David Katzelnick on behalf of the defense. The court also received a status report from Stensvad's social worker, John Feeney. These reports and the testimony of Stensvad's psychologist, Dr. Linda Nettesheim, were presented at the trial on Stensvad's petition for conditional release. The trial court denied Stensvad's petition.

We review the trial court's factual findings under a clearly erroneous standard. *See* § 805.17(2), STATS.; *cf.* ***State v. Jefferson,*** 163 Wis.2d 332, 338, 471 N.W.2d 274, 277 (Ct. App. 1991) (the findings of a trial court after a mental recommitment hearing pursuant to § 971.17(3), STATS., will not be overturned unless clearly erroneous). However, the trial court's application of those facts to the law, that is, whether Stensvad is dangerous to himself or others, is a question of law which we review independently. *See* ***Jefferson,*** 163 Wis.2d at 338, 471 N.W.2d at 277.

Where the trial court acts as the finder of fact, it determines the credibility of the witnesses and the weight to be given to testimony. ***State v. Michelle A.D.,*** 181 Wis.2d 917, 926, 512 N.W.2d 248, 251 (Ct. App. 1994). The

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[2] For a person adjudicated not guilty by reason of mental disease or defect for offenses committed prior to January 1, 1991, § 971.17, STATS., 1987-88, applies. *See* § 971.17(8), STATS., 1993-94. Section 971.17(2) provided in relevant part:

> A reexamination of a defendant's mental condition may be had as provided in s. 51.20 (16) .... If the court is satisfied that the defendant may be safely discharged or released without danger to himself or herself or to others, it shall order the discharge of the defendant or order his or her release on such conditions as the court determines to be necessary. If it is not so satisfied, it shall recommit him or her to the custody of the department ....

trial court must resolve conflicts in the testimony, and where the record supports more than one inference, we must accept the inference drawn by the trial court. *See* ***Estate of Wolff v. Town Bd.,*** 156 Wis.2d 588, 597-98, 457 N.W.2d 510, 513-14 (Ct. App. 1990).

Stensvad disputes the trial court's inferences and findings from the evidence presented. In its memorandum decision, the trial court found that the examining physicians agreed that Stensvad suffers from chronic paranoid schizophrenia, requires medication to control his schizophrenia for the rest of his life, has demonstrated a reluctance to be monitored to be certain he receives his medication, still hears voices even while taking medication and has proven to be unreliable in his medication program. The court found it difficult to accept the physicians' suggestion to release Stensvad from Mendota to a minimally structured environment when Mendota's staff had refused to transfer him within the institution to a lesser-secured unit. The court inferred that Mendota's staff was concerned about the present status of Stensvad's mental illness and the need for continued monitoring with regard to medication. The court also had a substantial doubt that the proposed release setting would permit proper monitoring of Stensvad's mental condition and medication to make release safe. The court found that Stensvad "still suffers from mental illness which must be controlled with regularly-administered medication and drugs" and concluded that he is dangerous to himself and others. This conclusion was largely premised on evidence that Stensvad would be dangerous to himself or others if he was unmedicated for a period of time. These concerns find support in the record.

All of the experts agreed that proper administration of medication would be essential to Stensvad's safe release from Mendota. Maier and Katzelnick testified that Stensvad would be dangerous to himself if he were to cease taking his medication for a period of time. Nettesheim agreed regarding the possible consequences if Stensvad failed to take his medication and stated that Stensvad has never acknowledged his need for medication and believes the medication does not assist him in managing his illness. Additionally, the court gave weight, as it was entitled to do, to the determination of the Mendota staff not to transfer Stensvad within the institution to a lesser-secured unit because Stensvad had not demonstrated a willingness to participate in programs which were prerequisite for such a transfer. Katzelnick and Maier noted that the ability to monitor Stensvad's mental condition on an ongoing basis, rather than when he would appear for his monthly injection once released, would be an

important prerequisite to Stensvad's success on release. The trial court was entitled to infer from the evidence presented that a noninstitutionalized setting would not permit sufficient monitoring of Stensvad's mental condition and medication to ensure a safe release.

We further conclude that the trial court's inferences and findings of fact support a legal conclusion that Stensvad remains dangerous. In ***State v. Randall,*** 192 Wis.2d 800, 840-41, 532 N.W.2d 94, 110 (1995), our supreme court addressed the constitutionality of § 971.17(2), STATS., 1987-88, and held that an insanity acquitee such as Stensvad may be confined in a state mental health facility for as long as he or she is considered dangerous. The court entrusted to the trial courts "[t]he ultimate determination of dangerousness [which] requires a careful balancing of society's interest in protection from harmful conduct against the acquitee's interest in personal liberty and autonomy." ***Randall***, 192 Wis.2d at 839, 532 N.W.2d at 109.

Stensvad contends that the trial court was "preoccupied" with the fact that he remains mentally ill and did not apply the dangerousness standard confirmed by the ***Randall*** court. We disagree. The trial court in this case undertook the balancing required by ***Randall***. It was swayed by Stensvad's ongoing mental illness and his attitudes toward medication, expert opinions regarding the importance of medication and Stensvad's dangerousness if unmedicated, and doubts regarding the likelihood that Stensvad would continue on medication and have proper support from mental health professionals if released from Mendota to a group home setting. Stensvad's release petition was properly denied under the ***Randall*** standard.

By the Court.—Order affirmed.

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