COURT OF APPEALS
DECISION
DATED AND FILED

May 23, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1558-CR **Cir. Ct. No. 1985CF79**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BRYAN J. STANLEY,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for La Crosse County: RAMONA A. GONZALEZ, Judge. *Affirmed*.

Before Lundsten, P.J., Blanchard and Kloppenburg, JJ.

¶1 PER CURIAM. Bryan Stanley appeals an order of the circuit court, which revoked his conditional release from his commitment under WIS.

STAT. § 971.17 (2011-12).[1] Stanley argues on appeal that the record does not support the circuit court's determination that his failure to report violent thoughts to his psychiatrist or his conditional release team constituted a violation of a term of his release. Stanley also argues that the circuit court erred in finding that his safety or the safety of others required revocation of his conditional release. For the reasons discussed below, we affirm the order of the circuit court.

BACKGROUND

¶2 In 1985, Bryan Stanley was found not guilty of three homicide charges by reason of mental disease or defect. ***State v. Stanley***, No. 2008AP197-CR, unpublished slip op., ¶2 (WI App. Nov. 13, 2008). He was committed to institutional care at Mendota Mental Health Institution ("Mendota"). ***Id.*** On November 13, 2008, we reversed a circuit court order that denied Stanley's petition for conditional release. ***Id.***, ¶23. Stanley was released from Mendota on April 2, 2009.

¶3 Prior to Stanley's release into the community, the court approved a conditional release plan. On April 2, 2009, the date Stanley was released from Mendota, he signed a document entitled "Conditional Release Rules and Conditions." The document states, "Your conditional release may be revoked if you do not comply with any of your court ordered conditions or if you violate any of the following rules[.]" The first rule on the list states, "You shall avoid all conduct which is in violation of federal or state statute, municipal or county

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

ordinances or which is not in the best interest of public welfare or your rehabilitation."

¶4 On March 8, 2012, Stanley met with a nurse at the VA hospital and reported to the nurse that he was having disturbing thoughts. The VA nurse informed Stanley's case manager, Bridget Garrity, who then informed his probation agent, Barbara Ninneman, of the type of thoughts Stanley reported having. The members of his conditional release team met on March 12, 2012, and decided to request that Stanley be apprehended. The Department of Health Services filed a statement of probable cause for detention and a petition for revocation of Stanley's conditional release.

¶5 The circuit court held a hearing on the petition on May 9, 2012. At the end of the hearing, the court concluded that Stanley had violated the first rule of his conditional release plan by failing to report intrusive thoughts to his psychiatrist or to the professionals who comprised his conditional release team. The circuit court then entered an order revoking Stanley's conditional release, and ordered that he be returned to institutional care. Stanley now appeals.

DISCUSSION

¶6 On appeal, Stanley argues that the record is void of any support for the circuit court's determination that his failure to report his intrusive, violent thoughts to his psychiatrist or his conditional release team constituted a violation of a rule or condition of his release. In deciding this issue, we apply the sufficiency of the evidence test, which we stated as follows in ***State v. Randall***, 2011 WI App 102, ¶13, 336 Wis. 2d 399, 802 N.W.2d 194 (quoting ***State v. Wilinski***, 2008 WI App 170, ¶12, 314 Wis. 2d 643, 762 N.W.2d 399):

> The sufficiency of the evidence test asks whether a [trial] court could reasonably be convinced by evidence it has a right to believe and accept as true. [***State v. Brown***, 2005 WI 29, ¶40, 279 Wis. 2d 102], 693 N.W.2d 715. If the evidence supports multiple reasonable inferences, we will adopt the inference the [trial] court adopts. ***Id.*** When applying this standard, reviewing courts give "deference to the [trial] court's strength in determining the credibility of witnesses and in evaluating the evidence." ***Id.***, ¶44. We "draw not only on a [trial] court's observational advantage, but also on the [trial] court's reasoning." ***Id.***

On a petition for conditional release, "[t]he state has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated, or that the safety of the person or others requires that conditional release be revoked." WIS. STAT. § 971.17(3)(e).

¶7 At the hearing on revocation of Stanley's conditional release, the State presented the testimony of five witnesses. One of the State's witnesses was a psychiatrist, Candace Cohen, who interviewed Stanley on April 18, 2012. Cohen testified that, when she asked Stanley how he was doing, he replied that he felt out of control and had been having hostile thoughts for a year and a half, or since approximately October 2010. The record reflects that, nonetheless, Stanley did not reveal his hostile and violent thoughts to members of his release team until March 2012.

¶8 Barbara Ninneman was Stanley's probation agent for the entire period he was on supervised release. Ninneman testified that, on March 8, 2012, Stanley had met with a nurse in the morning at the VA hospital and revealed that Stanley was having violent thoughts about women, but when Ninneman met with Stanley later that day, he did not mention those thoughts. Ninneman testified that the violent thoughts initially were described in generic terms, but that after Stanley returned to Mendota, she and the other members of the conditional release team

learned that the thoughts were directed toward specific people. Ninneman testified that, in her opinion, Stanley's failure to report his disturbing thoughts was a violation of the first rule of the terms of his release.

¶9 Stanley's case manager, Bridget Garrity, testified that she met with Stanley once a week, but that he did not report his disturbing thoughts to her. Garrity first learned that Stanley was having violent thoughts on March 8, 2012, from the VA nurse who had met with him that morning. Garrity testified that, when she met with Stanley at Mendota on April 20, 2012, Stanley told her that he was still having violent thoughts relating to women, approximately ten times per day. Garrity further testified that she learned from reports at Mendota that Stanley had been having these thoughts for a year to a year and a half. Like Ninneman, she testified that Stanley's failure to report his violent thoughts was a violation of the first rule of his conditional release because he was not acting in the best interest of his rehabilitation.

¶10 The State also presented the testimony of Jim Green, who had been the manager of Stanley's unit at Mendota for approximately ten years, until Stanley was released in 2009. Green testified that it was not until after Stanley's reconfinement in March 2012 that he learned that Stanley had been having violent thoughts toward a woman he had loaned money to in the 1990s. Green also testified that Stanley told him, after he was apprehended and returned to Mendota, that he had been having violent thoughts toward an identified relative. Stanley told Green that if he had a knife or gun he would do something to this relative, but then stated that he loved her and would not harm her.

¶11 Finally, the State presented the testimony of Erik Knudson, the associate medical director of Mendota. Knudson testified that "there was a

different amount of acknowledgment of symptoms between visits with [Stanley], and over time there was more acknowledgment of symptoms that were farther back in terms of duration ...." Knudson testified that it was likely that Stanley's intrusive thoughts were a symptom of his schizophrenia, and that the homicides Stanley had committed were committed at a time when he had been having intense symptoms of schizophrenia. Knudson also testified that it would take time to determine whether the interventions being done at Mendota and the changes in his medications would be effective for Stanley.

¶12 Stanley presented the testimony of psychiatrist Mark Midthun, who had been treating Stanley since January 2010. Midthun testified, when questioned by the circuit court, that Stanley did not disclose his violent thoughts to him until March 12, 2012. Midthun further testified that, on that date, Stanley told him that he wanted to be honest with his treatment team, but that he admitted to being worried about his conditional release being revoked.

¶13 Based upon the evidence in the record, we conclude that the circuit court could reasonably be convinced by the evidence that Stanley had violated the first rule of his conditional release by not reporting his intrusive, violent thoughts to his psychiatrist or the members of his conditional release team when those thoughts began to occur. *See* ***Randall***, 336 Wis. 2d 399, ¶13. Given that Stanley had a history of violent behavior associated with his schizophrenia, it was reasonable for the court to infer that his failure to report his recurring thoughts about committing violent acts, including some involving particular persons, when they began occurring was not in the best interest of public welfare or his rehabilitation and, therefore, violated the terms of his conditional release. Accordingly, we affirm the order of the circuit court.

¶14 Stanley also argues on appeal that the record does not contain evidentiary support for the circuit court's finding that the safety of Stanley or others required that his conditional release be revoked. As stated above, WIS. STAT. § 971.17(3)(e) requires that the State prove by clear and convincing evidence either "that any rule or condition of release has been violated, *or* that the safety of the person or others requires that conditional release be revoked." (Emphasis added). Because we affirm on the first basis, which is dispositive, we need not address the second. *See* ***Sweet v. Berge***, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (we need not address other issues when one is dispositive of the appeal).

By the Court.—Order affirmed.

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