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Ornondo N.

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

2013AP1099-NM

Milwaukee County v. Ornondo N.
(L.C. 2003ME000958)

Before Brennan, J.¹

Ornondo N. appeals from a trial court order extending his commitment for mental health treatment for a period of one year pursuant to WIS. STAT. § 51.20(13)(g)1. and 3. His appellate counsel, Donna Odrzywolski, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). She also served a copy of the no-merit report on Ornondo N., who has not filed a response. Based on our independent review of the no-merit report and the record, this court concludes that there are no arguable appellate issues. Therefore, the order is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Ornondo N. was first referred to community support programs for mental illness in 1983. He subsequently served time in mental health facilities and prison for violent acts related to his mental illness. In 2003, a six-month commitment order was entered after an incident where he grabbed a woman's hair and threatened to kill her. Subsequently, the commitment order was extended each year for a twelve-month period. Frequently, Ornondo N. stipulated to the extensions. Other years, there was a contested hearing. Ornondo N. did not appeal the initial commitment or any of the extension orders until the most recent extension, which is the subject of this appeal. Specifically, Ornondo N. appeals from the November 2, 2012 order extending his commitment for one year.

An extension hearing was conducted. Ornondo N. appeared with counsel. The County presented testimony from the clinical director for Wisconsin Community Services, Colleen Dublinski, who said that she has known Ornondo N. since 1983. She said that she was "[a]bsolutely" recommending that Ornondo N.'s commitment be extended, especially because he had recently been failing to take his medication. She said Ornondo N., who lives in the community and reports twice a week for oral and injected medication, missed 36 appointments in the last year. Dublinski said that when Ornondo N. fails to take his medication, his behavior changes, which has led to dangerous incidents in the past, as well as to his commitment. She implied that when Ornondo N. is not under a commitment order, he is less inclined to take his medication.

Dr. Charles Rainey, a forensic psychiatrist who was appointed to examine Ornondo N., testified that although he had been unable to contact Ornondo N., he had reviewed Ornondo N.'s medical records. He said that Ornondo N. suffers from schizoaffective disorder and can function in the community with the assistance of his community support program. Dr. Rainey testified

that if Ornondo N. does not take his medication, “he would decompensate.” He said that this opinion is based on past instances where Ornondo N. “stopped his medications and has required re-detention.”

Ornondo N. testified on his own behalf. He acknowledged that he suffers from a mental illness. He also admitted that he does not consistently take his medication, noting that he has also been diagnosed with cancer, which tires him. Ornondo N. was specifically asked about the County’s motion to extend his commitment, which led to the following exchange:

[Trial counsel]: Do you want to get off the commitment?

[Ornondo N.]: Yes and no. I want to make a deal where I come in two times a month because I can’t be bothered with these people bothering me. I’m a sick person right now. I don’t need the extra stress.

[Trial counsel]: So ... what are you saying about the commitment extension?

[Ornondo N.]: I don’t mind.

[Trial counsel]: You don’t mind?

[Ornondo N.]: I don’t mind. I’ll do a year, easy. As long as I have a little more freedom....

....

[Trial counsel]: What do you want me to argue to the judge when she asks what our position is?

[Ornondo N.]: I’m in stipulation[—]I want it to continue.

The trial court considered whether the County had met its burden of proof. The trial court granted the extension after finding that “if the extension was not continued, [Ornondo N.] would become a proper subject of detention under Chapter 51.” The trial court also told Ornondo N. that extension of the commitment order was the only issue before the court and that Ornondo N. would have to talk with his social worker about when he takes his medication.

After the trial court made its ruling, Orondo N. said he had prepared a statement to read. The trial court indicated that it had made its ruling and that the hearing was over. Orondo N. asked: “Who’s the next higher court up?” and was told the Court of Appeals. The trial court suggested that Orondo N. talk with his trial counsel.

Orondo N. subsequently filed a notice of intent to pursue post-disposition relief and post-disposition/appellate counsel was appointed. The no-merit report discusses two issues: (1) whether Orondo N. received ineffective assistance from trial counsel; and (2) whether the evidence offered was sufficient to extend Orondo N.’s commitment. This court agrees with appellate counsel’s description and analysis of the potential issues identified in the no-merit report and independently concludes that pursuing them would lack arguable merit. In addition to agreeing with appellate counsel’s description and analysis, we will briefly discuss those issues.

Appellate counsel states that Orondo N. “complains generally about [trial counsel’s] representation” but “does not identify a particular action or failure to act on [trial counsel’s] part, nor does the record suggest that [trial counsel’s] representation was deficient in any way.” We have independently reviewed the record, including the transcript of the hearing and the reports submitted in support of the extension. Like appellate counsel, we have not identified any deficiency in Orondo N.’s representation, especially in light of Orondo N.’s in-court stipulation to the extension.

Next, we consider the applicable legal standards in WIS. STAT. ch. 51 and the sufficiency of the evidence. The County, as the petitioning agency, had the burden “to establish evidence that the subject individual is in need of continued commitment.” *See* WIS. STAT. § 51.20(13)(g)3. The County had to show that Orondo N. was mentally ill and dangerous. *See*

§ 51.20(1)(a)1. & 2. Because Orondo N. is already under a commitment order, the County was permitted to demonstrate dangerousness “by a showing that there is a substantial likelihood, based on the subject individual’s treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn.” *See* § 51.20(1)(am).

Applying those standards here, we note that it was undisputed that Orondo N. suffers from a mental illness. With respect to dangerousness, both Dublinski and Dr. Rainey testified that if Orondo N. is not under a commitment order and fails to take his medication, his condition will deteriorate and he will require detention. This testimony supports the trial court’s finding that the County proved that the extension order was justified under WIS. STAT. § 51.20. There would be no arguable merit to asserting that there was insufficient evidence to support the extension.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Donna Odrzywolski is relieved of further representation of Orondo N. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals