

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JULY 31, 1997

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.

**Nos. 96-0031-CR, 96-0032-CR, 96-0033-CR,
96-0071-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL J. MODROW,

DEFENDANT-APPELLANT.

APPEAL from judgments and orders of the circuit court for Oneida County: MARK A. MANGERSON, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Michael Modrow appeals judgments convicting him of three counts of bail jumping and orders denying postconviction relief. The

sole issue we address on appeal is whether the imposition of a "no drinking" condition of bail was reasonable.¹ We affirm the judgments and orders.

This matter is before us on remand from the supreme court. On Modrow's initial appeal, we affirmed his conviction of negligent handling of a dangerous weapon, but reversed his bail jumping convictions. We concluded that the "no drink" condition could not form a basis for a bail jumping conviction in light of *State ex rel. Jacobus v. State*, 198 Wis.2d 783, 544 N.W.2d 234 (Ct. App. 1995). Subsequently, *Jacobus* was reversed. *State ex rel. Jacobus v. State*, 208 Wis.2d 39, 559 N.W.2d 900 (1997). The petition for review filed by the state and the cross-petition filed by Modrow were both held in abeyance pending the outcome in *Jacobus*. When the supreme court decided *Jacobus*, it granted the state's petition for review, summarily reversed our decision in *Modrow*, and denied Modrow's petition for cross-review. The supreme court then granted Modrow's motion that it remand this matter to this court with instructions that we consider issues initially briefed but not addressed in our decision in light of our reliance on *Jacobus*.

On remand, the sole issue remaining to be addressed is whether the imposition of a "no drinking" condition was reasonable under the circumstances presented. Modrow operated a tavern in Monico when two men entered and refused to pay a cover charge. Modrow reported he believed the men were armed. Modrow pointed a revolver at one of the men who was shot in the left hand after trying to push the gun away. Modrow was released on bond carrying a

¹ Modrow also argues that this argument was not waived. Because we chose to address the argument on the merits, we do not address the waiver issue.

"no drinking" condition. Thereafter, Modrow was observed on three occasions to have been drinking alcohol, contrary to his bond conditions.

Modrow argues that the no drinking bail condition was unreasonable because there was scant evidence that he had been drinking at the time of the offenses. The record satisfies us that the conditions are reasonable. Persons released on bail are subject to a number of conditions that are generally left to the trial court's discretion. *State v. Braun*, 152 Wis.2d 500, 511, 449 N.W.2d 851, 856 (Ct. App. 1989). We will not reverse a discretionary decision if the record shows that discretion was exercised and provides a reasonable basis for the decision. *Prahl v. Brosalme*, 142 Wis.2d 658, 667, 420 N.W.2d 372, 376 (Ct. App. 1987).

The trial court may impose conditions "deemed reasonably necessary to assure appearance as required or any nonmonetary condition deemed reasonably necessary to protect members of the community from serious bodily harm." *Braun*, 152 Wis.2d at 512, 449 N.W.2d at 856. Proper considerations include the nature, number and gravity of the offenses; the character, health, and residence of the defendant; his prior record, if any; and the policy against unnecessary detention of the defendant pending trial. Section 969.01(4), STATS.

The trial court was advised that the shooting took place in a tavern. Modrow indicated that he "wasn't drinking hardly anything until after the incident happened." The court was also advised that Modrow owned and operated a tavern and restaurant and had no prior record. The trial court observed that "we had the mix of alcohol and guns and somebody was injured as a result of it." The court stated that it is a dangerous mix and that it was going to "play it on the straight and narrow until the matter is resolved."

There is no requirement that the court must find that Modrow was legally intoxicated at the time of the shooting. The court understood that Modrow was self-employed in the tavern business. The court had reasonable public safety concerns based upon the nature and gravity of the shooting offense. The trial court could reasonably conclude that weapons and alcohol are a dangerous combination.

In light of the nature of the offense, the nature of Modrow's employment and Modrow's admission that at least some alcohol had been consumed before the incident, with a greater quantity after the incident, the trial court reasonably concluded that no consumption of intoxicants while released on bail was reasonably necessary to protect the community from serious harm. The record reflects a proper exercise of discretion.

By the Court.—Judgments and orders affirmed.

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

