COURT OF APPEALS
DECISION
DATED AND FILED

May 30, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP1458 **Cir. Ct. No. 1999CI2**

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

IN RE THE COMMITMENT OF SHAWN VIRLEE:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

SHAWN VIRLEE,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Door County: PETER C. DILTZ, Judge. *Affirmed.*

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

¶1 PER CURIAM. Shawn Virlee appeals an order revoking his supervised release and returning him to a treatment facility. The court revoked his supervised release for two reasons, either of which would be sufficient under WIS.

STAT. § 980.08(6m):[1] (1) Virlee violated the conditions and rules of his supervised release by having unsupervised contact with a child; and (2) he poses a significant risk to the safety of the community. Virlee argues that the circumstances of his unintentional contact with the children and his failure to disclose the contact to his agent do not justify revocation. He also argues that he did not receive appropriate notice that the State sought to revoke him as a threat to public safety and the State failed to present evidence to support that allegation. We reject these arguments and affirm the order.

¶2 Revocation of supervised release is discretionary and subject to a deferential standard of review. *See* ***State v. Burris***, 2004 WI 91, ¶45, 273 Wis. 2d 294, 682 N.W.2d 812. When supervised release is revoked on the basis of the violation of a rule or condition, the circuit court must explain its decision and square that decision with the treatment-oriented purposes of the law. ***Id.***

¶3 The underlying facts are not disputed. Virlee's employer directed Virlee to go to the employer's house and erect a shed. Virlee knew that his employer had two children and other children were sometimes present at the house for daycare, although he had been told that the daycare operation would be discontinued at some unspecified time. Two or three children came out of the employer's house and played in the yard while Virlee was present. Virlee did not approach the children and continued working on the shed. Virlee admitted that he did not report this contact to his release agent, although he did report it to his "monitor" and claims to have made an entry in his "coping journal," a document

[1] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

that would eventually be shared with his monitor. He did not indicate whether information given to his monitor would necessarily be passed on to his agent. The incident came to light thirty days later when Virlee's polygraph examination indicated deceptiveness about contact with children. Virlee then admitted to working in the children's presence and failing to notify his agent.

¶4 Virlee argues that this court should import an intent element into the rule prohibiting contact with children. That argument fails for several reasons. First, he had reason to believe children may be present based on his previous discussions with his employer. Accepting a job at a worksite where children were likely to be present shows some degree of intent. Second, he did not immediately leave when the children came into the yard and did not promptly report the incident. Virlee argues that there was no specific requirement that he disclose the contact. However, the written rules specifically required him to inform his agent of his whereabouts and activities as the agent directs. His supervised release agent and the agent's supervisor testified that they had gone over the rules with Virlee after another similar violation two months earlier. He was required to report even unintentional contact. Virlee's accepting a job at a site where he had reason to believe children would be present, his failure to immediately leave upon the children being present, his deceptiveness and failure to comply with the reporting requirements makes the unplanned contact with the children sufficiently significant to warrant revocation.

¶5 Virlee cites cases in which probationers and parolees were forgiven their incidental contacts with ex-convicts and drug addicts. A sexual predator differs from mere probationers or parolees. Virlee has been adjudicated unable to control his impulses around children. The children are at risk regardless of whether he actively seeks them out or accidentally encounters them. Therefore, a

reasonable condition of Virlee's supervised release was that he avoid contact with children. By going to his employer's home when he knew children would be present Virlee violated the rules of his release.

¶6 The violation of the conditions of release and other behavior support the finding that public safety required revocation of Virlee's supervised release. The testimony established that Virlee has not internalized the need to err on the side of caution, and instead decides for himself whether his conduct rises to the level of a violation. Expert testimony established that this attitude and Virlee's failure to appreciate the significance of his violations present a significant danger to the public.

¶7 Virlee argues that he did not receive sufficient notice that the State intended to present evidence regarding the public safety claim. However, the statement of probable cause for detention and the revocation summary both allege that Virlee's behavior endangered the safety of others. The revocation summary stated "Confinement is necessary to protect the public from further offending activity …." While Virlee did not receive advance notice of exactly what each of the witnesses would say at the hearing, he was adequately informed that his danger to the public would be an issue.

¶8 Virlee argues that the State essentially abandoned the public safety theory grounded on a report by Dr. David Prescott when Prescott did not testify. Prescott's opinions were presented through the testimony of Lloyd Sinclair, the associate treatment director at Sand Ridge Secure Treatment Center. An expert witness can base his opinion on facts or data made known to him if they are of a type reasonably relied upon by experts in the particular field in forming opinions

or inferences. *See* WIS. STAT. § 907.03. The State did not abandon the public safety theory when it relied on Sinclair's testimony rather than Prescott's.

¶9 Virlee argues that Sinclair inappropriately concluded he was a threat because of three prior consensual relationships with adult women, and none of the pre-trial documents gave notice that a finding of danger to public safety might be predicated on those relationships. *See* ***State v. Van Bronkhorst***, 2001 WI App 190, ¶¶16, 21-22, 247 Wis. 2d 232, 633 N.W.2d 236. That argument misstates Sinclair's testimony. Virlee's relationship with these women was only used as background information regarding his attitude that Sinclair found dangerous. When Virlee was told that associating with vulnerable, alcohol or drug dependent women was a problem, he minimized the danger, exemplifying his lack of vigilance to avoid behavior that led to problems in the past. Sinclair's conclusion that Virlee was a threat to safety was not based on his relationships with these women. Rather, the threat came from Virlee's excusing and minimizing the potential problems, and the relationships merely exemplify his lack of vigilance. ***Van Bronkhorst*** does not require advance notice of every detail that a witness will supply to exemplify a conclusion.

By the Court.—Order affirmed.

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