

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 10, 2002**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

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

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 01-3044-CR**

**Cir. Ct. No. 00 CF 5127**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**RYAN A. JACQUES,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: JACQUELINE D. SCHELLINGER, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

Before Fine, Schudson and Curley, JJ.

¶1 PER CURIAM. Ryan A. Jacques appeals from a judgment of conviction entered after he pled guilty to one count of possession of more than 500 but fewer than 2500 grams of tetrahydrocannabinols, with the intent to deliver, one count of possession of one gram or less of lysergic acid diethylamide, with the

intent to manufacture, and one count of misappropriation of personal identifying information. *See* WIS. STAT. §§ 961.41(1m)(h)(2), 961.41(1m)(f)(1), and 943.201(2) (1999-2000).<sup>1</sup> Jacques alleges that the trial court erred when it: (1) denied his motion to suppress evidence obtained during an allegedly illegal protective sweep of his house; and (2) imposed what he claims are unduly harsh conditions on his extended supervision. We affirm in part; reverse in part and remand with directions.

## I. BACKGROUND

¶2 Police officers initially went to Jacques's house to execute a warrant for his arrest.<sup>2</sup> Jacques answered the door wearing boxer-shorts and a t-shirt. Police officers thus escorted Jacques upstairs to his bedroom so that he could dress.

¶3 A few police officers remained downstairs while Jacques was dressing. They saw marijuana and a pipe commonly used for smoking marijuana, according to police officer's testimony, "in plain view" on a coffee table. The police officers also ran a license-plate check on two cars in Jacques's driveway and learned that one of the cars was listed to another person whom Jacques

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<sup>1</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

<sup>2</sup> The warrant identified the person to be arrested as "Garrett Thomey." Jacques gave this name to the police when he was arrested for carrying a concealed weapon and the possession of marijuana. The police subsequently discovered that, almost twenty years ago, Garrett Thomey had died shortly after he was born. After running a fingerprint-search, the police learned that the person to be arrested was actually Jacques.

subsequently identified as a “friend.”<sup>3</sup> Based upon this information, the police officers conducted a protective sweep of Jacques’s house, limiting their search to areas where a person could have been hiding.<sup>4</sup> They discovered four or five stacks of banded money on the top shelf of a closet in Jacques’s bedroom.

¶4 Approximately two and one-half to three hours later, the police officers searched Jacques’s house pursuant to a warrant. The warrant was based upon the officers having seen the marijuana and pipe. The police officers discovered drugs, drug paraphernalia, and books related to manufacturing drugs and changing identities.

¶5 Jacques filed a motion to suppress the evidence recovered during the search of his house. He claimed that the police officers did not have the authority to initially enter his house because they did not have a valid arrest warrant. He further claimed that the police officers illegally conducted a protective sweep of his house, and that the search warrant and the evidence seized pursuant to its execution “were fruits of the prior, illegal search.” The trial court denied Jacques’s motion, determining that the arrest warrant was valid and that the police conducted a proper protective sweep of his house.

¶6 Jacques pled guilty. The trial court sentenced him to five years in prison and two and one-half years of extended supervision on count one (possession of tetrahydrocannabinols), five years in prison and two and one-half

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<sup>3</sup> The police officers later learned that Jacques had registered the car in the name of a deceased child.

<sup>4</sup> A protective sweep is a “quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others.” *Maryland v. Buie*, 494 U.S. 325, 327 (1990).

years of extended supervision on count two (possession of lysergic acid diethylamide) to run concurrent to count one, and withheld sentence and imposed two and one-half years of probation for count three (misappropriation of personal identifying information).

¶7 Jacques filed a postconviction motion alleging that certain terms of his extended supervision were “unduly harsh and inappropriate.” The trial court denied the motion.

## II. ANALYSIS

### *A. Protective Sweep*

¶8 First, Jacques alleges that the trial court erred when it denied his motion to suppress the evidence discovered during the protective sweep. We decline to address the validity of the protective sweep, however, because the evidence seized during the sweep is not relevant to Jacques’s charges under the following sequence of events.

¶9 The police officers entered Jacques’s house pursuant to an arrest warrant. Jacques does not challenge on appeal the validity of the arrest warrant. Indeed, in his brief, Jacques concedes that “[t]he officers entered [his] residence because they had a valid arrest warrant.” Once the officers had lawfully entered Jacques’s house, they saw marijuana and a pipe in plain view. Again, Jacques does not challenge this on appeal.

¶10 Observation of the marijuana and the pipe in plain view supported the search warrant. During the search pursuant to this warrant, the police officers discovered, among other things: an Acu-Lab scale commonly used to weigh drugs; a Taurus .22-caliber semi-automatic pistol; several plastic baggies

containing marijuana; six small bottles containing LSD; several books on how to manufacture drugs and acquire a new identity; and an identification card, a birth certificate, and a death certificate for Garrett Thomey. According to the complaint, this evidence, not the money found during the protective sweep, formed the basis for Jacques's charges.

¶11 Thus, the evidence discovered during the protective sweep, four or five stacks of money, is not material to the charges to which Jacques pled guilty, and our analysis turns to the validity of the evidence discovered during the search. As noted, Jacques does not on appeal challenge the validity of the search warrant or the seizure of the evidence pursuant to its execution. Therefore, he has waived appellate review of these claims. *See Reiman Assocs., Inc. v. R/A Adver., Inc.*, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292, 294 n.1 (Ct. App. 1981) (contentions not briefed or argued on appeal are abandoned). Accordingly, we affirm.

*B. Extended Supervision*

¶12 Second, Jacques alleges that the trial court erroneously exercised its discretion when it imposed conditions of extended supervision that were, in part, “unduly harsh and inappropriate.” We agree. Although we recognize that trial courts have broad discretion in tailoring the terms of extended supervision, the terms must be reasonable. For the reasons set forth below, the terms of Jacques's extended supervision are not reasonable.

¶13 It is within the broad discretion of the trial court to impose appropriate conditions on probation as long as the conditions are reasonable and

appropriate.<sup>5</sup> *State v. Carrizales*, 191 Wis.2d 85, 93, 528 N.W.2d 29, 31 (Ct. App. 1995); *see* WIS. STAT. § 973.01(5) (“the court may impose conditions upon the term of extended supervision”). The conditions of probation are reasonable and appropriate when they serve the goals of: (1) the rehabilitation of the offender; and (2) the protection of the community. *State v. Simonetto*, 2000 WI App 17, ¶6, 232 Wis. 2d 315, 606 N.W.2d 275. A trial court has the discretion to tailor individualized probation conditions; however, it should not erroneously exercise its discretion “by imposing probation conditions on convicted individuals that reflect only [its] own idiosyncrasies.” *State v. Oakley*, 2001 WI 103, ¶13, 245 Wis. 2d 447, 629 N.W.2d 200.

¶14 At sentencing, the trial court imposed the condition that Jacques:

attend narcotics anonymous, cocaine anonymous, or alcoholics anonymous, four times a week, all the time you’re under supervision.... If your agent does determine that you have some kind of substance abuse issue, the time that you, the number of days a week that you would be required to go to one of those twelve[-]step programs can be increased to seven.

Jacques alleges that the condition that he attend a substance-abuse treatment program four times a week is unreasonable because there is no evidence that he needs drug or alcohol treatment. He also claims that it is unreasonable to require him to attend classes “every day of the week for a period of five years.”

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<sup>5</sup> We review authority relating to the imposition and review of the propriety of conditions of probation as applicable to conditions of extended supervision. The Wisconsin legislature recently enacted an amendment to WIS. STAT. § 302.113 that will modify the right of those on extended supervision and the department to seek judicial review of conditions on extended supervision set by the court. *See* 2001 Wis. Act 109, § 395. The amendment will become effective on February 1, 2003. *See* 2001 Wis. Act 109, § 9459.

¶15 We do not agree with Jacques that he is “required” to attend classes every day of the week. He would only be required to attend class seven days a week if his extended-supervision agent determined that this was necessary after substance-abuse assessment. We do agree with Jacques, however, that the trial court erroneously exercised its discretion when it required him to attend classes four days a week without any evidence that he has a substance-abuse problem. This condition is not reasonably related to Jacques’s rehabilitation—without assessment, the trial court could not have known what level of treatment, if any, Jacques will require. Therefore, we remand with directions to modify this condition so that it is structured like the seven-day-a-week condition; that is, the condition should be imposed to allow Jacques’s extended-supervision agent to make an appropriate recommendation regarding classes after drug-and-alcohol-abuse assessment.

¶16 Second, the trial court imposed the condition that Jacques maintain full-time employment “that can’t include temporary work, seasonal work, [or] work for cash.” The trial court instructed Jacques: “You cannot work at a fast food place and you can’t work at a car wash. You have to have a regular, full time job, which is viable to support you, so you don’t go back and rely on illegal activities in order to support yourself.” Jacques claims that this condition is “unduly harsh” because it is not related to the crimes to which he pled guilty. We agree for two reasons.

¶17 First, the trial court failed to explain why the absolute preclusion of part-time employment was reasonable and appropriate. We can imagine a situation where Jacques could effectively support himself with two part-time jobs just as well as he could with one full-time job. Second, the limitations on the types of employment that Jacques may consider are unreasonable in this case.

Jacques was eighteen and one-half years old when he was first sentenced.<sup>6</sup> Moreover, he now has a felony record. Thus, Jacques's employment opportunities will be limited. Accordingly, it was unreasonable for the trial court to impose conditions that will essentially preclude Jacques from seeking employment in the fields where he is the most likely to find a job. Thus, we remand with directions to modify the conditions on Jacques's employment so that he will have a reasonable opportunity to find employment.

¶18 The trial court also imposed the condition that Jacques "may not engage in any behavior at any employment that results in [his] discipline or [his] termination from ... employment." Jacques claims that this condition is unreasonable because Wisconsin is an at-will employment state; thus, his prospective employer could terminate him for "any reason or no reason at all." See *Hausman v. St. Croix Care Ctr.*, 214 Wis. 2d 655, 663, 571 N.W.2d 393, 396 (1997).

¶19 We do not agree with Jacques that this condition is unreasonable because he could be terminated for any reason or for no reason at all. The trial court was clear that Jacques could be revoked only if his behavior caused his employer to terminate him. We do agree, however, that the term "any behavior at any employment" is unreasonable. This term encompasses behavior that is both lawful and appropriate. Accordingly, it is not reasonably tailored to further Jacques's rehabilitation or to protect society. Thus, we remand with directions to modify this condition to include only unlawful behavior and behavior that the trial court determines specifically to be inappropriate.

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<sup>6</sup> Jacques was born on June 6, 1982. The trial court originally sentenced Jacques on January 30, 2001, and it resentenced him on May 15, 2001.



¶20 Finally, the trial court imposed the condition that Jacques “immediately submit ... to paternity tests and to the orders of the family court ... [i]f anybody accuses [him] of being a parent of their child, while [Jacques is] on supervision.” It also required Jacques to “[t]ake a parenting education course within six months of [his] release onto supervision, to understand child development.” We agree with Jacques that these conditions are unreasonable. Jacques does not have any children and there are no child-support or paternity actions currently pending against him. Moreover, these conditions are completely unrelated to the crimes to which Jacques pled guilty. Therefore, in light of the circumstances of this appeal, we do not see how these conditions would further Jacques’s rehabilitation. Accordingly, we remand with directions to eliminate this condition, recognizing that there are ample mechanisms for justice should any woman accuse him of fathering her child.

*By the Court.*—Judgment affirmed in part; reversed in part and cause remanded with directions.

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

