

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 15, 2011**

A. John Voelker  
Acting 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. 2010AP1745**

**Cir. Ct. No. 2009CV16596**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN EX REL. ANTOINE HATCHETT,**

**PETITIONER-APPELLANT,**

**v.**

**DAVID H. SCHWARZ , ADMINISTRATOR, DIVISION OF  
HEARINGS AND APPEALS,**

**RESPONDENT-RESPONDENT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
WILLIAM SOSNAY, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Antoine Hatchett, *pro se*, appeals from a circuit court order denying his request for relief in a certiorari review of the decision to revoke his probation. Hatchett argues that his probation should not have been revoked because the basis for revocation—Hatchett’s refusal to sign a statement

given to his probation agent—was impacted by his agent’s failure to advise him of his Fifth Amendment privilege against self-incrimination. Hatchett also argues that the attorney who represented him at the revocation hearing and in the circuit court provided ineffective assistance by not raising the Fifth Amendment issue as a defense. We decline to address the potential merits of these issues because they are raised for the first time on appeal and because the effectiveness of counsel during the revocation hearing is not an issue that is properly raised in a certiorari review. Therefore, we affirm the circuit court’s order.

### **BACKGROUND**

¶2 Hatchett entered no-contest pleas to two counts of failing to pay child support for more than 120 consecutive days, in violation of WIS. STAT. § 948.22(2) (2001-02).<sup>1</sup> He was sentenced to eighteen months of initial confinement and eighteen months of extended supervision on each count, to be served consecutively. This sentence was imposed and stayed, and Hatchett was placed on probation for five years.

¶3 While on probation, Hatchett was subject to various rules of community supervision. One of those rules required him to “provide true and correct information verbally and in writing, in response to inquiries by the agent.”

¶4 Hatchett’s probation agent sought to revoke Hatchett’s probation based on five alleged violations of the rules of community supervision: (1) pushing his fiancée in April 2009; (2) hitting, pushing and grabbing his fiancée

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

in May 2009; (3) having contact with his fiancée after the probation agent issued a verbal no-contact order to Hatchett; (4) violating Milwaukee Secure Detention Facility rules by placing three-way calls and using a false pin number to do so; and (5) refusing to sign a statement taken by the agent concerning the three-way calls and contact with Hatchett's fiancée.

¶5 A revocation hearing was held before an administrative law judge ("ALJ"). Hatchett, who was represented by counsel, and his probation agent both testified.

¶6 Ultimately, the first three allegations were withdrawn by the agent or rejected by the ALJ. The ALJ found that Hatchett had violated two rules of supervision by making three-way calls and by refusing to sign the statement prepared after his probation agent attempted to talk with him. With respect to the latter violation, the ALJ accepted the testimony of the probation agent, who testified that she attempted to talk with Hatchett about calls to his fiancée and prepared the following written summary of his remarks: "I don't have anything. I did not know that I couldn't call on 3-way. I'm not giving a statement. I don't have a statement in regard to having contact with [my fiancée]." The agent said that Hatchett "refused to sign the 'non-statement'" and then "walked out of the room telling [the agent] that she 'walked with the devil' and 'walk[s] with evil.'" The ALJ rejected Hatchett's testimony that he had not refused to give a statement and had not mentioned the devil or evil, noting: "I do not find the offender very credible or reliable in his rendition of the events."

¶7 The ALJ concluded that revocation was appropriate. It found that Hatchett was "a poor risk on supervision" and that it "would unduly depreciate the seriousness of the violations if probation were not revoked."

¶8 Hatchett appealed the ALJ’s decision. The administrator of the Division of Hearings and Appeals (“DHA”) sustained the decision, mentioning only Hatchett’s failure to sign his probation agent’s report as the basis for affirming the revocation. The appeal decision stated in relevant part:

The record supports the underlying decision. Antoine Hatchett committed a serious violation by refusing to give his agent a statement. He specifically refused to account for his activities after the agent confronted him about disregarding her directive not to have contact with [Hatchett’s fiancée]. Hatchett’s refusal to provide a statement directly impaired the department’s ability to supervise him within the community.

... Hatchett’s conduct makes him a poor risk for continued supervision within the community. Accordingly, the underlying decision is sustained.

¶9 Hatchett, still represented by counsel, sought certiorari review in the circuit court. He challenged the decision on several grounds, including DHA’s consideration of all of the facts in the record and the determination that revocation was appropriate. The circuit court upheld the revocation. Hatchett filed a *pro se* notice of appeal and this appeal follows.

### STANDARD OF REVIEW

¶10 “In a review of a decision to revoke probation, we defer to the decision of the Division of Hearings and Appeals, applying the same standard as the circuit court.” *State ex rel. Simpson v. Schwarz*, 2002 WI App 7, ¶10, 250 Wis. 2d 214, 640 N.W.2d 527.

Our review is limited to the following questions: (1) whether DHA kept within its jurisdiction; (2) whether DHA acted according to law; (3) whether DHA’s actions were arbitrary, oppressive or unreasonable and represented its will rather than its judgment; (4) and whether the

evidence was such that DHA might reasonably make the decision in question.

*Id.*

## DISCUSSION

¶11 Hatchett, now representing himself, has raised two issues on appeal. Neither was raised in the proceedings below. We refuse to consider the merits of these arguments and affirm.

¶12 First, Hatchett argues that DHA's decision to revoke his probation "for failure to provide a signed statement was not based upon valid law and reasoning when his agent failed to properly advise him of his Fifth Amendment privilege against self-incrimination." (Some capitalization omitted.) Questions concerning whether Hatchett had to be or was properly advised of his Fifth Amendment rights prior to his conversation with his probation agent, and how that should affect the analysis of the alleged rules violation, were not raised at the hearing before the ALJ.<sup>2</sup> The Fifth Amendment issue was also not raised in Hatchett's appeals to DHA and the circuit court. We decline to consider the merits of this issue because it was not raised in the proceedings below. *See State v. Huebner*, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727 (issues that are

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<sup>2</sup> Hatchett's brief contains a single assertion that the probation agent's "failure to advise Hatchett of his Fifth Amendment privilege against self-incrimination arose at the hearing." Hatchett has not identified when this issue was raised and we have not located any reference to the Fifth Amendment in the hearing transcript. Hatchett's appendix includes several pages of the hearing transcript, including a question the ALJ asked the probation agent about warnings listed on the top of the standard Department of Corrections form that is used to take a probationer's statement. The form, which is in the record, contains a warning that failure to account for one's activities and whereabouts is a basis for revocation. The form does not reference Fifth Amendment rights.

not preserved in the circuit court generally will not be considered for the first time on appeal).

¶13 Second, Hatchett argues that his attorney provided ineffective assistance by failing “to make a reasonable investigation into the issue of his probation agent’s failure to grant him immunity before seeking to have him provide and sign a statement.” Hatchett contends that his attorney should have raised this issue at the hearing and in the appeals to DHA and the circuit court. Our review is limited to the actions of the administrative body only, and the effectiveness of counsel during the revocation hearing is not a proper subject for review in this appeal. *See State v. Ramey*, 121 Wis. 2d 177, 181-82, 359 N.W.2d 402 (Ct. App. 1984) (writ of certiorari is not appropriate remedy for claim of ineffective assistance of counsel in a probation revocation hearing). Therefore, we do not consider the merits of Hatchett’s allegations of ineffective assistance of counsel.

¶14 Hatchett has not challenged the revocation decision on any other bases, including those raised at the circuit court. Issues raised in the circuit court but not briefed or argued on appeal are deemed abandoned. *See Reiman Assocs., Inc. v. R/A Adver., Inc.*, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1981). Thus, we do not consider Hatchett’s previous challenges to DHA’s decision.

*By the Court.*—Order affirmed.

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

