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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

October 31, 2023

To:

Hon. David A. Hansher
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Dennis Schertz
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Reuben Adams
3616 N. 20th Street
Milwaukee, WI 53206-1804

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

2020AP1605-NM

In re the commitment of Reuben Adams: State of Wisconsin v.
Reuben Adams (L.C. # 1994CF942970)

Before Geenen, Gundrum and Gill, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Reuben Adams appeals from an order of the circuit court that revoked his supervised release from a sexually violent person commitment under WIS. STAT. ch. 980 (2017-18).¹ Appellate counsel Dennis Schertz filed a no-merit report, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22). Adams filed a response. Counsel also filed a supplemental no-merit report as ordered by this court. Upon this court's independent review of the record as mandated by *Anders*, counsel's reports, and Adams's response, we

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

conclude that there are no issues of arguable merit that could be pursued on appeal. Therefore, we summarily affirm the order.

In 1990, Adams was convicted of one count of second-degree sexual assault of a child. In 1996, Adams was found to be a sexual violent person under WIS. STAT. ch. 980 and was committed to the custody of the Department of Health Services.² In October 2015, the circuit court approved Adams for supervised release.

In November 2018, the Department petitioned the circuit court to revoke Adams's release. WIS. STAT. § 980.08(7)(a). An amended revocation petition was filed in December 2018. The amended petition alleged four instances of rule-violating conduct. The first was an allegation that Adams, while being transported from work to home by a service provider, masturbated in her car and offered to pay her bills in exchange for sexual favors.³ The other allegations in the probable cause statement included claims that Adams was observed with empty beer cans near him, that he refused to take a urinalysis test when asked, and that he had possessed lottery tickets. These alleged violations were contrary to rules that prohibited Adams's possession or consumption of alcohol and conduct "not in the best interest of the public's welfare or [Adams's] rehabilitation," as well as rules that required compliance with any ordered tests, cooperation with rules and expectations of service providers, provision of "true and accurate information" to the Community Reintegration Team, and submission of all expenditure

² At the time of Adams' initial commitment, the department was named the Department of Health and Social Services.

³ There were significant questions regarding the reliability of the narratives surrounding this incident. Consequently, the circuit court said it would "not [give] much credence to" that particular allegation.

requests. Following a hearing on the amended petition, the circuit court revoked Adams's supervised release in an order entered August 27, 2019. Adams appeals.

The no-merit report first addresses whether the circuit court erroneously exercised its discretion when it revoked Adams's supervised release. "A person on supervised release is subject to the conditions set by the court and to the rules of the department." WIS. STAT. § 980.08(6m). The circuit court may revoke supervised release if the State proves, "by clear and convincing evidence, that any rule or condition of release has been violated and ... the violation of the rule or condition merits the revocation[.]" Sec. 980.08(8)(a). This revocation decision is a matter of circuit court discretion. *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 of release, the court should explain its decision and square that decision with the treatment-oriented purposes of the law." *Id.* The test for an exercise of discretion is not whether we agree with the circuit court's ruling, but whether appropriate discretion was exercised. *Martindale v. Ripp*, 2001 WI 113, ¶29, 246 Wis. 2d 67, 629 N.W.2d 698. An exercise of discretion requires the circuit court to employ a process of reasoning based on the facts of record and on the appropriate legal standard. *Burris*, 273 Wis. 2d 294, ¶45.

In its oral ruling, the circuit court concluded "that the drinking of the beer ... and his possession of lottery tickets, is sufficient to revoke [Adams's] supervised release.... I find that the [S]tate has proven by clear and convincing evidence that Mr. Adams repeatedly violated the rules of his supervised release based on those two factors and merits revocation." The circuit court further stated that Adams's rules violations "indicate the lack of consideration of safety of others and I think that the violations ... rise to the level of severity that the safety of others requires his supervised release."

The record adequately supports the circuit court's exercise of discretion. There was an adequate factual basis for the circuit court to conclude that the rule violations had occurred. Although Adams disputed consuming any beer, at least one can was found next to him while he was sleeping, and several more were within throwing distance. Thus, the circuit court concluded that "there's a reasonable inference that he was the one who drank the beer and threw it." There was also testimony that Powerball lottery tickets were found in Adams's bedroom.

Further, two witnesses—supervised release contract specialist Michael Chase and psychologist Dr. Ryan Mattek—testified at the hearing about the significance of these rule violations. Chase explained that alcohol had been a major contributing factor to Adams's offending history. Chase further told the court that Adams "showed a pattern of doing things well when he wanted something. And then when things weren't going exactly the way he wanted, then he would lose engagement and we saw the rule violations ... [a]nd the upping the ante to including alcohol as a rule violation." Chase testified that there was a "team sentiment that Mr. Adams present[ed] an elevated risk to the community and potentially more need[ed] to be done to manage his risk," even after changes to his treatment plan were made in an attempt to better accommodate Adams's needs. Dr. Mattek also provided reasons why Adams's alleged alcohol consumption was problematic. First, "it's against the rules of supervised release" and demonstrates "a willingness to break those rules and not hold himself accountable to them." Second, "alcohol lowers a person's inhibitions. And after a person consumes alcohol, they may make poor choices and poor decisions." Finally, Adams had "a history of substance use contributing to his offenses. And so the use of substances such as alcohol on supervised release is concerning[.]" Mattek also testified that there had been a "long-standing problem with Mr.

Adams'[s] treatment engagement.” Both witnesses thought returning Adams to commitment at Sand Ridge Secure Treatment Center would likely help him re-engage with treatment.

In his response to the no-merit report, Adams downplays these violations, asserting that “there must be a showing of dangerousness to the violation, and the violation must show dangerousness along with a showing of sexual conduct when revoking Adams’s supervised release and returning him back to institutional confinement[.]” However, there is no requirement that a revocation decision be based on “sexual conduct” in WIS. STAT. § 980.08. The court may revoke an order for supervised release based on the violation of “any rule or condition of release[.]” *See* § 980.08(8)(a).

The record reflects a proper exercise of discretion by the circuit court and adequately supports a conclusion that a return to confinement was necessary to further Adams’s treatment objectives in light of the nature of the rule violations.⁴ There is no arguable merit to the contrary.

The no-merit report also addresses whether there is any arguably meritorious claim that Adams received ineffective assistance from trial counsel. “To prevail on an ineffective assistance claim, a defendant must prove both that counsel performed deficiently and that the deficient performance prejudiced the defense.” *State v. Prescott*, 2012 WI App 136, ¶11, 345 Wis. 2d 313, 321, 825 N.W.2d 515. To demonstrate deficient performance, Adams must show facts from which we can conclude that the attorney’s representation fell below objective standards of reasonableness. *State v. McDougle*, 2013 WI App 43, ¶13, 347 Wis. 2d 302, 830

⁴ In his response to the no-merit report, Adams also asserts that there was a “valid alternative to revocation not requiring placement in an institution,” specifically, giving him “a stricter security regimen.” The circuit court found that Adams had been offered, but rejected, an alternative to revocation.

N.W.2d 243. To establish prejudice, Adams ““must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.”” *Id.* (citation omitted).

We agree with appellate counsel’s analysis in the no-merit report. Trial counsel was not deficient in his defense of Adams. Trial counsel made appropriate evidentiary objections, skillfully cross-examined the State’s witnesses, and offered a compelling argument against revocation. However, trial counsel simply could not convince the circuit court that Adams’s rule infractions were as insignificant as Adams believed them to be. There is nothing in the record to suggest that Adams received ineffective assistance of trial counsel, and there is no arguable merit to so claiming.

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 (2021-22).

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved of further representation of Adams in this matter. *See* WIS. STAT. RULE 809.32(3) (2021-22).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals