



OFFICE OF THE CLERK
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/IV

September 20, 2013

To:

Hon. Kevin E. Martens
Circuit Court Judge
Safety Building Courtroom, # 502
821 W. State Street
Milwaukee, WI 53233-1427

John Barrett
Clerk of Circuit Court
Room G-8
901 N. 9th Street
Milwaukee, WI 53233

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Peter Rank
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

David H. Schwarz
Division of Hearings & Appeals
P.O. Box 7875
Madison, WI 53703-7875

John J. Castellano 122774
Racine Corr. Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

Dept. of Justice, Civil Litigation Unit
P.O. Box 7857
Madison, WI 53707-7857

Racine Corr. Inst.
Racine Corr. Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2012AP2543 State of Wisconsin ex rel. John J. Castellano v. David N. Schwarz,
Administrator, Division of Hearings and Appeals
(L.C. #2012CV1619)

Before Blanchard, P.J., Lundsten and Sherman, JJ.

John J. Castellano, pro se, appeals an order denying a petition for a writ of certiorari stemming from the revocation of Castellano's parole. Based upon our review of the briefs and

record, we conclude at conference that this case is appropriate for summary disposition and we summarily affirm. *See* WIS. STAT. RULE 809.21 (2011-12).¹

On June 6, 2000, Castellano pled guilty to one count of second-degree sexual assault of a child and three counts of sexual exploitation of a child. The circuit court imposed four consecutive ten-year sentences. After serving fifteen years and six months, Castellano was released on parole on May 17, 2011, under the approval of an Interstate Compact with Arizona.

On June 9, 2011, Castellano sent a letter to his Wisconsin agent that contained a printout of an email he had sent to the Veteran's Administration in Milwaukee, in which he attempted to secure housing and services from the Milwaukee V.A. His Wisconsin agent contacted his Arizona agent and was told that the issue would be discussed at Castellano's next appointment. Based on Castellano's own written admission, dated June 28, 2011, and his testimony at his revocation hearing, Castellano met with his Arizona agent on June 16, 2011. He was instructed to come back for an appointment on June 23, 2011, at which time they would discuss further details about returning to Wisconsin.

On June 17, 2011, Castellano took an American Airlines flight from Arizona to Milwaukee, without permission or knowledge of either of his agents. On June 20, the Wisconsin Department of Corrections was notified by the Milwaukee Veteran's Administration that Castellano had returned to Wisconsin, and was at the V.A. facility. Castellano was instructed to report to his Wisconsin parole agent, which he did.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

A parole revocation hearing was held on November 10, 2011. The administrative law judge concluded that Castellano “violated his rules as alleged in all three allegations based upon his admissions and the testimony of the agent, which I find truthful and reliable.” The ALJ adopted the recommendation of two years’ reconfinement offered by Castellano’s attorney, much less than that recommended by the DOC.

Castellano appealed the Administrative Law Judge’s decision to the Division of Hearings and Appeals, which sustained the ALJ’s decision on December 22, 2011. The agency’s decision stated, in part:

I note that Castellano signed each page of his rules. (See exhibits 4 and 11.) And based on his statement dated June 28, 2011, there is little doubt that he knew he was not to use a computer and that he knowingly left his state of supervision, Arizona, without authorization from parole authorities in Arizona or Wisconsin. These are serious violations, especially given the nature of Castellano’s underlying crimes. He is on supervision for sexual assault and sexual exploitation of children. Parole authorities cannot provide supervision sufficient to protect children from further crime if they do not even know that Castellano has moved from one state to another.

Castellano filed a petition for a writ of certiorari, which the circuit court denied on November 12, 2012. Castellano now appeals.

Substantial evidence supports the agency’s decision. *See State ex rel. Ortega v. McCaughtry*, 221 Wis. 2d 376, 385-86, 585 N.W.2d 640 (Ct. App. 1998). Castellano demonstrated his understanding of the rules through his statements and testimony. In his testimony at the revocation hearing, Castellano admitted that he returned to Wisconsin from Arizona without permission. Castellano’s testimony also supported the credibility of his written statement of June 28, 2011, in which he admitted his unpermitted return to Wisconsin, his

change of residency, as well as his use of a computer and accessing the Internet contrary to his parole rules.

As the agency decision also correctly noted, Castellano signed a copy of both the Rules of Community Supervision and the Standard Sex Offender Rules, acknowledging that he received a copy of those rules, and initialing many of the specific rules. The rules are plain on their face.

The revocation was further supported by the testimony of Wisconsin agent Jennifer Kostrzewa, whom the Administrative Law Judge found credible. We will not reevaluate credibility determinations or retry the facts. See *Von Arx v. Schwarz*, 185 Wis. 2d 645, 655, 517 N.W.2d 540 (Ct. App. 1994). The revocation was reasonable and supported by substantial evidence.

Contrary to Castellano's perception, it is not dispositive that Kostrzewa did not personally sign next to the statement, "I have reviewed and explained these rules to the offender." Castellano argues that Kostrzewa's delegation of authority to a social worker was inappropriate under the Uniform Commercial Code, because the social worker was not "authorized to act as proxy for the Department of Corrections to enter into a contract that involved fiduciary duties" However, the Uniform Commercial Code regulates commercial transactions; the Rules of Community Supervision and Standard Sex Offender Rules are not commercial transactions.

Castellano also raises a First Amendment and free speech claim regarding his supervision restriction disallowing Internet access. However, he raises this issue for the first time on appeal and it will therefore not be further considered. See *Wirth v. Ehly*, 93 Wis. 2d 433, 443, 287

N.W.2d 140 (1980). Even on the merits Castellano’s argument fails. As a parolee, Castellano was not “entitled to the full range of constitutional rights accorded citizens.” *State ex rel. Ludtke v. Department of Corr., Div. of Probation & Parole*, 215 Wis. 2d 1, 12, 572 N.W.2d 864 (Ct. App. 1997). Rather, the rights are conditioned upon compliance with the conditions of probation or parole. *Id.* Moreover, Castellano’s supervision rules were tailored to supervise him and not a “blanket ban.” *See Doe v. Prosecutor, Marion Co., Indiana*, 705 F.3d 694, 703 (7th Cir. 2013). The agency decision is affirmed.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals