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September 7, 2016

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

2015AP1561

State of Wisconsin ex rel. Paul Adams v. Brian Hayes
(L.C. # 2014CV1590)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

Paul Adams appeals pro se from a circuit court order denying his petition for a writ of certiorari challenging the revocation of his extended supervision. Adams argues that he was denied due process in the revocation proceeding. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. Wis.

STAT. RULE 809.21 (2013-14).¹ We conclude that Adams waived this due process argument and is otherwise not entitled to relief. We affirm the circuit court.

Adams was on extended supervision for operating while intoxicated (5th and 6th offenses). His supervision rules required him to avoid violating state statutes and precluded him from entering bars and taverns and from consuming alcohol. The Division of Hearings and Appeals affirmed the administrative law judge's decision to revoke Adams's extended supervision for multiple violations of his supervision rules including drinking in taverns, using marijuana and driving while intoxicated. Thereafter, Adams pled no contest to operating while intoxicated (7th offense), a crime predicated on the conduct that was the basis for revoking his extended supervision for operating while intoxicated (5th and 6th).

Review of an extended supervision revocation is obtained by writ of certiorari to the circuit court. *State ex rel. Washington v. Schwarz*, 2000 WI App 235, ¶16, 239 Wis. 2d 443, 620 N.W.2d 414. In an appeal from the circuit court's order affirming the decision of an administrative agency, we review the agency's decision, not the circuit court's decision. *Mineral Point Unified Sch. Dist. v. WERC*, 2002 WI App 48, ¶12, 251 Wis. 2d 325, 641 N.W.2d 701.

We review whether there was substantial evidence to support the revocation. *Washington*, 239 Wis. 2d 443, ¶17. “Substantial evidence is evidence that is relevant, credible, probative, and of a quantum upon which a reasonable fact finder could base a

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

conclusion.”” *Von Arx v. Schwarz*, 185 Wis. 2d 645, 656, 517 N.W.2d 540 (Ct. App. 1994) (citation omitted).

Adams argues to this court that his due process rights were violated because his probation agent did not properly complete the Department of Corrections Form 429, Revocation Hearing Request. Specifically, he argues that the agent did not check enough boxes to indicate the evidence to be presented at the revocation hearing. On Form 429, the agent checked the boxes for the following evidence: the offender’s written statement regarding the alleged violation, police reports, and the agent’s case file, which included revocation summaries, violation reports and warrants.

As respondent Hayes argues on appeal, Adams, who was represented by appointed counsel, did not raise the deficient Form 429 argument before the administrative law judge.² During the revocation hearing, the administrative law judge reviewed with the parties all of the documents submitted, and Adams’s counsel advised that he possessed all of those documents. Adams did not lodge an objection relating to the notice provided by the agent’s Form 429. Adams had the opportunity to review all of the documents before the administrative law judge and to cross-examine the witnesses at his revocation hearing.

We conclude that Adams’s due process argument is waived on appeal because it was not raised in the revocation proceeding before the administrative law judge. “It is settled law that to preserve an issue for judicial review, a party must raise it before the administrative

² The record does not contain the petition for review submitted to the Division of Hearings and Appeals. Therefore, the record does not support an argument that Adams raised this issue in an administrative proceeding.

agency.” *State v. Outagamie Cty. Bd. of Adjustment*, 2001 WI 78, ¶55, 244 Wis. 2d 613, 628 N.W.2d 376. We generally do “not consider issues beyond those properly raised before the administrative agency, and a failure to raise an issue generally constitutes a waiver of the right to raise the issue before the reviewing court.” *Id.* We see no reason to depart from this rule in this case.

Even if the due process issue was not waived and even if Form 429 was deficient, which we do not decide, we would conclude that any error was harmless. First, there was substantial evidence to support the decision to revoke Adams’s extended supervision for multiple rule violations (the testimony of Officers Caldwell and Neill and Adams’s probation agent, and Adams’s admission that he was in a bar, a rule violation). Second, a violation of supervision rules “is proven by a judgment of conviction arising from conduct underlying an allegation” of a rule violation. WIS. ADMIN. CODE § HA 2.05(6)(f) (through July 2016). After his extended supervision was revoked, Adams pled no contest to operating while intoxicated (7th offense), which was part of the basis for revoking his extended supervision. An error is harmless if there is no “reasonable possibility that the error contributed to the outcome...” *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶28, 246 Wis. 2d 1, 629 N.W.2d 768. On this record, any error relating to Form 429 was harmless in the context of the extended supervision revocation.

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals