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July 18, 2017

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

2015AP1044 State ex rel. Ellis D. Jones v. Brian Hayes (L.C. #2013CV12501)

Before Kloppenburg, P.J., Lundsten and Blanchard, 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).

Ellis Jones, pro se, appeals from a circuit court order denying his petition for certiorari review of a probation revocation. The circuit court affirmed the Division of Hearings and Appeals decision that sustained the decision of an Administrative Law Judge (ALJ) revoking Jones's probation. Based upon our review of the briefs and record, we conclude at conference

that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).[1] We affirm.

In 1998, Jones was convicted of two counts of burglary. Jones's sentence included ten years in prison, which was suspended, and ten years of probation, to run consecutively. In 2013, officers responded to a domestic violence battery report at Jones's residence. They observed Jones's live-in girlfriend P.W. with multiple cuts on her forearm, facial bruising, and scratches to her neck. They also observed a shattered glass table, as well as bottles and a lamp that had been thrown around the room. P.W. told one of the officers that Jones had punched her in the face, grabbed her by the neck, and swung at her with a box cutter or razor. She told the officer that Jones then began throwing glass items around the house and smashed the glass table before fleeing the residence.

Following this incident, the Department of Corrections initiated probation revocation proceedings. After a hearing at which Jones was represented by counsel, the ALJ revoked Jones's probation. The division sustained the ALJ's decision on appeal. Jones filed a petition for a writ of certiorari to the circuit court, which affirmed the division's decision.

Our review in a certiorari action is limited to the record created before the administrative agency. ***State ex rel. Whiting v. Kolb***, 158 Wis. 2d 226, 233, 461 N.W.2d 816 (Ct. App. 1990). We will consider only whether (1) the division stayed within its jurisdiction; (2) it acted according to law; (3) its action was arbitrary, oppressive or unreasonable and represented its will

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

and not its judgment; and (4) the evidence was such that the division might reasonably make the order or determination in question. ***Id.***

Jones has not made a developed argument to challenge the agency's decision on any of these four factors. His brief[2] is a mere two pages and contains only a Facts section and a Conclusion section. There are no citations to the record. Jones cites ***Paige v. Hudson***, 341 F.3d 642 (7th Cir. 2003), but makes no effort to explain how that civil action under 42 U.S.C. § 1983 relates to our certiorari review of his probation revocation. Jones also attempts to direct us to a U.S. Supreme Court case holding that a probationer's due process rights are violated if the revocation decision totally lacks evidentiary support or is so irrational as to be unfair. However, the citation he has provided brings us to an unrelated case. Even with proper legal support, his argument would fail. As best we can tell, Jones is arguing about the credibility of witnesses. As such, he does not even make a colorable argument that the agency decision totally lacks evidentiary support or that it is so irrational as to be fundamentally unfair.

This court does not need to consider arguments that are unsupported by adequate factual and legal citations or are otherwise undeveloped. *See* ***Grothe v. Valley Coatings, Inc.***, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463, *abrogated on other grounds by* ***Wiley v. M.M.N. Laufer Family Ltd. P'ship***, 2011 WI App 158, 338 Wis. 2d 178, 807 N.W.2d 236 (lack of record citations); ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (undeveloped legal arguments). Although we make allowances for unrepresented litigants, "[w]e cannot serve as both advocate and judge." *See* ***Pettit***, 171 Wis. 2d at 647. We may therefore

[2] Jones received nine extensions of time to file his appellant's brief, ultimately extending the original due date more than fourteen months. Dist. I Order dated November 7, 2016.

decline to scour the record in an attempt to develop viable, fact-supported legal theories on the appellant's behalf. *See* ***State v. Jackson***, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999) ("A party must do more than simply toss a bunch of concepts into the air with the hope that either the [circuit] court or the opposing party will arrange them into viable and fact-supported legal theories.").

To its credit, the State did scour the record and develop potentially viable, fact-supported legal theories on Jones's behalf. The State then responded to each potentially viable theory in a thirteen-page brief that defends the division's decision. Jones failed to file a reply brief. Accordingly, we conclude that Jones has conceded that the State's response is correct. *See* ***United Coop. v. Frontier FS Coop.***, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (appellant's failure to respond in reply brief to an argument made in respondent's brief may be taken as a concession).

Upon the foregoing reasons,

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

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

Diane M. Fremgen
Clerk of Court of Appeals